

CODE OF CONDUCT FOR MEMBERS

Introduction and interpretation

1. This code applies to **you** as a member, or co-opted member, of Birmingham City Council (“the Council”), The code is required by Section 27 of the Localism Act 2011.
2. It is **your** responsibility to comply with the provisions of this Code and uphold the seven principles of public life set out in paragraph number 3 below. Failure to do so may result in a sanction being applied by the Council and in respect of the disclosure of statutory disclosable Pecuniary Interests the potential of criminal liability.

2. Scope

- 2(1) You must comply with this Code whenever you:-

- (a) Conduct the business of Birmingham City Council; or
- (b) Act, claim to act or give the impression you are acting as a representative of Birmingham City Council;

References to your official capacity will be construed accordingly.

- 2(2) In addition to having effect in relation to conduct in your official capacity, this Code has effect, at any time, where conduct constitutes a criminal offence for which you have been convicted or received a Police Caution.

3. General obligations

- 3(1) Councillors and Co-optees are committed to behaving in a manner that is consistent with the seven principles of public life, as detailed in the Localism Act 2011 and set out below:

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 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 to seek to influence them in the performance of their official duties.

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.

Objectivity – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holder 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 they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Leadership – Holders of public office should promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence.

3(2) Specific Duties

3.2.1 You **must** follow the Code of Conduct when you are representing your authority.

3.2.1 You **must** treat others with respect. This includes avoiding unfair, unreasonable or demeaning behaviour directed to another person.

3.2.2 You **must** promote equality in your actions and behaviours.

3.2.3 You **must** not –

(a) Do anything which may cause the Council to breach any of the equality duties, this means you **must not** discriminate against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age or do anything which may knowingly cause the Council to breach the Equality Act 2010

(b) Bully any person, this means you **must not** bully, intimidate or attempt to intimidate any council officer or other person. [An example of this could be an attempt to undermine another person and have an adverse effect on them in terms of upset, detriment and ill health]. This applies both in the physical realm and social media / cyberspace.

(c) Intimidate or attempt to intimidate any person who is likely to be: a complainant, witness or person involved in the administration of any proceedings in relation to an allegation that a member [including yourself] has failed to comply with Birmingham City Council's or any other Authority's Code of Conduct for Members.

(c) Do anything which compromises or is likely to compromise the impartiality of on those who work for, or on behalf of the Council.

3.2.4 You **must** be aware of what statutory disclosable pecuniary and personal interests are and take steps to register the same in accordance with the guidance set out below, if you are unsure – refer to the Monitoring Officer for advice. You are under a legal duty to disclose statutory disclosable pecuniary interests; failure to do so is a criminal offence.

3.2.5 You **must** keep your Register of Interest form including statutory disclosable Pecuniary and Personal Interests up-to-date and review annually at the start of the municipal year each May.

It is **your** responsibility to complete the declaration and update the same with any interests as they arise. You must then complete a new form. This should be done within 28 days of the awareness of the interest and no later than 28 days after the adoption of the code or your appointment as a councillor.

https://www.birmingham.gov.uk/info/50069/councillors/285/councillors_interests

3.2.6 You **must not** participate in meetings or be involved in decision-making where you have a Statutory Disclosable pecuniary or Personal interest, to do so in the cases of statutory disclosable pecuniary interest is a criminal offence.

3.2.7 You **must** register Gifts and Hospitality worth more than £25, which are received in your role as a member.

3.2.8 You **must** comply with the law as it applies to your role and the Council.

3.2.9 You **must** be aware and follow the Council's policies in respect of email and information technology use and policies on the use of Social media. In particular, with social media, when you are communicating you should consider the distinction between private and official communications.

3.2.10 You **must** not conduct yourself in a manner which could reasonably be seen as bringing your office or the council into disrepute.

3.2.11 You **must** not use the Council's resources, which includes the Council's address and email address, for any personal, party political or non-Council purpose.

3.2.12 You **must not** compromise the impartiality of people who work for your authority or on its behalf. Please refer to the Member and Officer protocol.

3.2.13 When reaching decisions on any matter you must have regard to any relevant advice provided to you by the Council's –

- (a) The Head of Paid service (the Chief Executive)
- (b) Chief Finance Office (the Corporate Director of Finance & Governance); or
- (c) Monitoring Officer (the City Solicitor & Monitoring Officer) where that officer is acting pursuant to his or her statutory duties.

3.2.14 You **must not** sexually harass colleagues. Colleagues for this purpose include Members and Officers of Birmingham City Council.

3.2.15 You **must not** use / or attempt to use your position improperly for personal gain or to advantage / disadvantage to your friends or close associates and others.

3.2.16 You **must not** disclose personal information or information given to you in confidence by anyone, or information acquired by you which you believe, or ought to believe, or ought reasonably to be aware, is of a confidential nature.

3.2.17 You **must not** prevent anyone getting information they are entitled to.

PART 2

Interests

Personal interests

4. You have a personal interest in any business of the Council where either it relates to or is likely to affect –

(i) anybody of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;

(ii) any body –

(a) exercising functions of a public nature;

(b) directed to charitable purposes;

(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); or

(d) which is a private club or society, such as the Freemasons, a recreational club, working men's club or private investment club, of which you are a member or in a position of general control or management;

(iii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25 (is this limit adequate?); or

(iv) Or a decision is to be considered which might reasonably be regarded as affecting the well-being or financial position of you or a member of your family or a close friend or someone with whom you have a close association. It could also be a decision which to a greater extent than it would affect the majority of other council tax payers, ratepayers or inhabitants of your ward or electoral area.

5. Statutory Disclosable pecuniary interests

In accordance with Section 30(3) of the Localism Act 2011 a pecuniary interest is "statutory Disclosable pecuniary interest" in relation to a member, if it is of a description specified below and either

- is an interest of the member, or
- is an interest of:-
 - (a) the member's spouse or civil partner
 - (b) a person with whom the member is living as husband and wife, or
 - (c) a person with whom the member is living as if they were civil partners,

and the member is aware that the other person has the interest.

However it should be noted that the disclosure of sponsorship is only in relation to the sponsorship of the member and not in relation to a spouse or civil partner.

In the table below :

"body in which you have a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“relevant period” means the period of 12 months ending with the day on which the Member gives notification of a disclosable pecuniary interest;

“relevant person” means **you** (as a member) or your spouse or civil partner; a person with whom you are living as husband and wife; or a person with whom you are living as if you were civil partners;

“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.

DISCLOSABLE PECUNIARY INTERESTS

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant Council: (a) under which goods or services are to be

	provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer
Corporate Tenancies	Any tenancy where (to the member's knowledge) – (a) the landlord is the Council; and (b) the tenant is a body in which the relevant person has a beneficial interest
Securities	Any beneficial interest in securities of a body where: (a) that body (to the member's knowledge) has a place of business or land in the area of the Council; and (b) either: (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if 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 relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

6. Notification of interests

- 6.1. You must notify the Council's monitoring officer of any interest that is classed as a personal interest or a statutory disclosable pecuniary interest –
- (a) within 28 days of becoming a member or co-opted member of the Council;
 - (b) within 28 days of acquiring any interest or becoming aware of any such interest;
 - (c) within 28 days of any change to an interest that you have previously registered; or
 - (d) within 28 days of disclosing an interest at a meeting of the Council

7. Disclosure of interests

- 7.1 Where you have a personal interest in any business of the Council and you attend a meeting of the Council at which the business is considered unless the interest is a sensitive interest (see paragraph 7(3)), you must disclose the existence and nature of that interest and then consider whether the interest is of such significance that it warrants withdrawal from and no further participation in

the discussion or vote on that item, with any such withdrawal from the meeting being recorded in the minutes.

- 7.2 Where you have a statutory disclosable pecuniary interest in any business of the Council and you attend a meeting of the Council at which the business is considered, unless the interest is a sensitive interest (see paragraph 7(3)), you must disclose the existence and nature of that interest and, unless you have been granted a dispensation (see subparagraph 7(4)), you must not take part in the discussion or vote on that item and must withdraw from the meeting room, including the public gallery, before the item is considered by the meeting.
- 7.3 You need not disclose the nature of any personal interest or disclosable pecuniary interest in an item of business where the Council's monitoring officer considers that disclosure of the details of the interest ("a sensitive interest") could lead to you or a person connected with you being subject to violence or intimidation.
- 7.4 Paragraph 7(2) and 7(3), do not apply where the monitoring officer or the Standards Committee, as the case may be, has granted a dispensation to enable you to take part in the discussion of, or vote on that item, or both.

Dispensations available

Circumstances in which dispensations may be granted

The Standards Committee, or in urgent situations, the Independent Chair of the Standards Committee, may grant a dispensation to a Member in the following circumstances:

- that so many Members of the decision making body have disclosable pecuniary interests in the matter that the meeting would be inquorate; or
- that the representation of different political groups on the decision making body would be so upset as to alter the likely vote on the matter; or
- that it is in the interests of persons living within Birmingham; or
- that it is otherwise considered appropriate to grant a dispensation.

Records of dispensations

The Monitoring Officer will ensure that:

- the existence, duration and nature of any dispensation is recorded in writing; and
- that such record is kept with the register of interests.

8. Offences

8.1 You commit an offence if without reasonable excuse –

- (a) you fail to notify the Monitoring officer within 28 days of becoming a member of the Council of any statutory disclosable pecuniary interests that you have;
- (b) you fail to disclose at a meeting of the Council the nature and extent of a statutory disclosable pecuniary interest that you have, and are aware of having, in an item of business that is being considered at the meeting, unless –
 - (i) the interest is a sensitive interest and paragraph 7(3) applies;
 - (ii) the interest is entered in the Register of Members' Interests maintained by the monitoring officer; or
 - (iii) the monitoring officer has been notified that you have such an interest but the register has not yet been updated ("a pending notification");
- (c) you fail to notify the monitoring officer of a Statutory disclosable pecuniary interest when you have declared the same where it has arisen at a meeting or other decision making forum and you have not registered the same within 28 days of the date on which you made the disclosure;
- (d) you participate in any discussion of, or vote on, any item of business at a meeting of the Council in which you have a statutory disclosable pecuniary interest of which you are aware, unless you have been granted a dispensation in accordance with paragraph 7 (4), or
- (e) you have a disclosable pecuniary interest of which you are aware in any item of business to be dealt with, or being dealt with, by you as a member of the Cabinet acting under delegated powers and despite having that interest continue to deal with that item of business, except where such dealing is for the purpose of arranging for the item to be dealt with otherwise than by you.

Terms within this Code of Conduct are given their normal English meaning, for example, to bully is defined in the Oxford English Dictionary as “to use superior strength or influence to intimidate (someone) typically to force them to do something”

DRAFT

PROCEDURE FOR CONSIDERING COMPLAINTS ALLEGING A FAILURE TO COMPLY WITH A MEMBERS' CODE OF CONDUCT WITHIN THE AREA OF 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 for Councillors, which can be found [\(insert link\)](#) and is available for inspection on the Council's website.

Making a Complaint

If you wish to make a complaint,

This has to be on the specific complainant form provided. This can be made available on request is on the Council's website or from the link here [\(insert link\)](#)

This needs to be sent to;

The Monitoring Officer
P O Box 15992
Birmingham
B2 2UQ
MonitoringOfficer@birmingham.gov.uk

You will have to identify yourself in the complainant 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 will 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.

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

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 one of the two¹ persons 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.
9. If a member or prospective member of a Standards Committee has a personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint. Any conflicts identified during the course of a matter will be managed appropriately by the Monitoring Officer.

¹ Could subject to consultation be 4 rather than 2 including the Chair and Deputy Chair

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 voting 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' should 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 use the City Council's complaints form {Insert link}. 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 so long as they contain 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 complainant form.
7. The following types of complaint will not be considered as 'valid complaints' under this procedure:
 - a. Complaints which are submitted anonymously^{2 3};
 - b. Complaints which do not identify a subject Member;
 - 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;

² 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.

³ Anonymous complaints which reveal potential fraud or corruption will be referred to Internal Audit for consideration under the Council's adopted Whistle blowing Policy

- e. Complaints which relate to the alleged actions of employees of the Council or non-voting 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 Council⁴;
 - 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 relate to an alleged failure to comply with the rules regarding 'Disclosable Pecuniary Interests'⁵;
 - l. 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 complaint⁶. If the Monitoring Officer decides that the complaint is 'invalid', this notification is made for information only. The Monitoring Officer may, before making such a determination, seek advice from the Independent Chair⁷ of the Standards committee.

Could extend this to the IP as well if necessary or a member of standards committee

9. 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.
10. In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.
11. In cases involving member to member complaints, these will not be investigated until the Monitoring Officer considers other processes eg mediation or political

⁴ The Monitoring Officer will only investigate allegations during the period in which the person was an elected member.

⁵ Such complaints will be redirected to the West Midlands Police, subject to the complainant's agreement.

⁶ 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.

⁷ Any references to the Chair shall be meant to include the Deputy Chair.

group processes with the Group Secretaries and/or the Group Whip (see also paragraph 16 below).

Stage 2 – Initial Investigation

12. 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.
13. The Deputy Monitoring Officer may appoint an Investigating Officer to conduct the initial review on behalf of the Monitoring Officer.
14. However in appropriate cases the Monitoring Officer may appoint an external Investigating Officer to undertake a full investigation where circumstances warrant such an appointment.
15. 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.
16. The Deputy Monitoring Officer will provide the subject Member with a reasonable timescale within which to respond to the complaint. This will usually be 21 or 28 days although this may be extended at the discretion of the Deputy Monitoring Officer. At the same time the Deputy Monitoring Officer will forward a copy of the complaint to the relevant Group Secretary or Group whip⁸.
17. The Deputy Monitoring Officer will also provide the subject Member with the contact details for the Independent Person⁹ should the member wish to take further independent advice.

This is new and subject to consultation and need to consider at what stage this is done? We will need to review how the Independent person (IP) operates as I don't think we use the IP properly. A new role description has been included.

However this could be included at the end of the initial investigation if the recommendation that there are grounds that need determination by Standards Committee.

18. 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.
19. The Deputy Monitoring Officer /Investigating Officer will produce a written report for initial consideration by the Monitoring Officer, the Chair of the Standards Committee.

⁸ 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.

⁹ See Annex 1 for a summary of the role of the Independent Person.

Do we need to consider including at least one other person – perhaps a Member or a 2nd IP?

The other option is to create a sub-committee consisting of a mix of lay/members (or even just 1 member) to consider initial draft reports w before they are sent out – need to be careful as it could delay the decision making process and make the whole process unwieldy

Also need to consider the impact on the role of the Chair of Standards as that currently works well.

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.
22. The Monitoring Officer will review the Investigating Officer's report after consulting with the Independent Chair (or the IP or both). If the Monitoring Officer is not satisfied that the investigation he 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 you disagree with or which you 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 IP/Chair.

Interestingly BCC has this part of the process at the initial assessment stage whereas some authorities have this as later in the process as part of the "full investigation".

Our current process works well as the majority of complaints are not upheld but there is transparency and the decision is fully set out in the decision notice.

Special provisions – member/member

25. Where a complaint is made by one councillor against another councillor, the Monitoring Officer, following consultation with the Chair of Standards Committee may refer the matter to the relevant Group Secretaries/Group Whips for them to mediate between the parties.

26. If the matter cannot be resolved or if mediation is not thought to be possible then the Group Secretaries/Group Whips will refer the matter back to the Standards Committee.
27. 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.
28. 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 matter¹⁰.

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

29. The Standards Committee Chairman will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant, the Member concerned and to his/her Group Secretary/Chief whip notifying that the Monitoring Officer and Independent Chair of the Standards is satisfied that no further action is required, and enclose a copy of the Investigating Officer's final report.

Note - Although there is no internal right of appeal, the complainant or the 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?

30. Where 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 refer the matter to the Independent Person to attempt 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.

¹⁰ This can be used as evidence at any full hearing

Local Resolution

31. 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 may consult with the Independent Person (subject to comments around the role of the IP) 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.
32. 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. Offering to engage in a process of mediation or conciliation between the subject Member and the complainant; or
 - v. Any other action capable of resolving the complaint.
33. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee [and the Parish/Town Council] for information as well as the group secretary/Group Whip , but will take no further action.
34. Where the Member makes a reasonable offer of local resolution, but the complainant is not prepared to accept the offer, the Chair of Standards Committee will take account of this in deciding whether the complaint merits a full hearing.

Stage 3 – Standards Committee Hearings

35. 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.
36. The Monitoring Officer must arrange for a meeting of the Standards Committee (or the relevant Sub-Committee – assuming we want to go down this route¹¹) to be convened to consider the commissioned report of the complaint. Wherever possible the meeting will take place within 28 days of the report being finalised.

¹¹ Such Sub-Committee will be made up of xxx Members of the Standards Committee, one of whom must be from the same political group as the subject Member (wherever possible), but not all of the Members will be from the same political group.

37. 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.
38. The following people¹² will also be invited to attend the Committee meeting:
- a. The complainant;
 - b. The subject Member;
 - c. The Independent Person.
 - d. Any witnesses
39. The Monitoring Officer will attend the meeting in order to advise the committee.
40. 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 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 excluded¹³.
41. 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.
42. The Committee may also ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.
43. 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.
44. 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.
45. 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

¹² 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.

¹³ The Committee may invite people to remain in the meeting if it is considered that they could provide information relevant to the complaint.

- c. What form of action might be appropriate.
46. 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. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.
47. 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.
48. The recommendations available to the Committee include¹⁴ but are not limited to:
- a. A formal letter to the subject Member from the Chair of the Standards and Conduct 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.
49. 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, 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.
50. 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.
51. Within five working days of the meeting the Chair of the Committee will write to the complainant and the subject Member explaining the final decision of the Committee and detailing any recommendations made.
52. There is no right of appeal against a decision of the Committee.

¹⁴ The committee may not decide to disqualify or suspend the subject Member as a Councillor.

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.

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 **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.

Miscellaneous provisions

1. Standards Committee to be made up as follows;
 - 6 councillors
 - 4 lay members (one of who will be designated as the Chair of Standards and one as the deputy Chair).
 - 1 representative from each Town/parish Council within Birmingham
2. Further consideration to be given on whether to remove Standards Committee from rules around proportionality so membership provides a wider cross section. It is currently proposed that this be done on a 2:2:2 basis from the 3 largest political parties represented on the Council.
3. The quorum for a formal hearing will be a minimum of;
 - 3 members
 - 2 lay members (one of who must be either the designated Chair or Deputy Chair).
4. The complaints procedure will no longer form part of the Councils constitution but any changes must be agreed by Standards Committee.
5. To assist with the Monitoring Officer /Chair in determining complaints the Monitoring Officer /Chair may convene a subcommittee. The makeup of the subcommittee shall be at the discretion of the Monitoring Officer /Independent Chair.
6. At the discretion of the Monitoring Officer /Independent Chair of Standards, the Monitoring Officer will bring, on a quarterly basis, a report to Standards Committee details of all complaints and decisions.