

**Minutes of the Standards Committee**

**9<sup>th</sup> December, 2016 at 2.30 pm  
at the Sandwell Council House, Oldbury**

**Present:** Councillor Lewis (Chair);  
Councillor S Crumpton (Vice-Chair);  
Councillors Edwards, E M Giles and Shackleton.

**Observers:** Mr Bell and Ms Williams (Independent Persons).

**Apologies:** Councillors Sandars, Trow and Worsey;  
Mr Tomkinson (Independent Person).

21/16 **Independent Person**

The Chair took the opportunity to welcome the new Independent Person, Ms Julie Williams, to her first meeting of the Standards Committee.

22/16 **Minutes**

Councillor Edwards advised that, at the previous meeting, he had asked for the Committee to see an unredacted version of the Wragge report and requested that officers look into this matter and report back.

**Resolved** that the minutes of the meeting held on 16<sup>th</sup> September, 2016 be confirmed as a correct record.

23/16

**Members' Register of Interests – Annual Review**

The statutory requirements relating to the Register of Members' Interests were set out in Section 29 of the Localism Act 2011 and required the Monitoring Officer to establish and maintain a Register of Members' Interests, which also included the interests of co-opted members of the Council. The Council's present arrangements complied with the statutory provisions.

The statutory requirements also stated that the Council must ensure that copies of the Register were available at an office of the authority for inspection by members of the public at all reasonable hours. The Register was available for inspection at Sandwell Council House upon request to the Monitoring Officer. The Register was held in paper format and, to comply with statutory requirements, the Members' Register of Interests was available for the public to view on the Council's website. The Council's arrangements enabled the public to view details of each individual Member's interests [including co-opted members] on the Council's website via the Committee Management Information System.

One to one meetings with the Monitoring Officer and senior legal staff had been offered to all members. The Committee confirmed that it was of the opinion that one to one meetings should continue as part of next year's review of the registers.

The registers were periodically reviewed by the Monitoring Officer. The Committee last inspected the Register of Interests in September 2015 and its work programme provided for an annual review of the Register.

The Committee carried out its inspections of the Register of Members' Interests.

24/16

**Review of Arrangements for Dealing with Standards under the Localism Act 2011 and Accompanying Complaint Form**

The Authority had a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by Members. To comply with this duty, the Council had put in place arrangements for dealing with standards allegations (the "Arrangements"). Recent complaints had highlighted improvements that could be made to the Arrangements and the complaint form.

## Standards Committee – 9<sup>th</sup> December, 2016

From a procedural point of view, a number of improvements had been introduced to expedite matters and ensure clarity of the process and terms of reference of a complaint for all parties, including the drafting of a decision notice by the Monitoring Officer, the recording of interviews with the subject member and the ability to stop an investigation where it was not appropriate to continue.

A new Confidential Informant Process allowed for Sandwell employees to report information anonymously to the Monitoring Officer. The informant may be interviewed as part of the investigation process, but would not need to reveal that they were the complainant. This new process would ensure that employees felt confident to raise important concerns, which needed to be addressed and may not have otherwise been raised with the Monitoring Officer, without fear of reprisal.

A paragraph about vexatious/repetitious complaints had been included and the ability for the Monitoring Officer to consider whether a complaint made by a member had been made otherwise than in accordance with the Code of Conduct and whether such action may amount to a breach of the same.

A paragraph addressing covert recordings had been included; this was important to ensure that the arrangements were in line with wider Council policy and to set out the type of evidence that would not be acceptable in an investigation.

Other complaints which had not proceeded to the investigation stage had also raised aspects of the arrangements which could be amended, in particular, the removal of the right of appeal against the Monitoring Officer's decision. There was no legal obligation to include a right of appeal and it had been advised by leading practitioners in the field of standards that we should not be doing so as it unnecessarily lengthened a process which should be swiftly finalised. Complainants still had the option of taking the matter to the Local Government Ombudsman if they were unhappy with the decision making of the local authority.

When considering a local resolution, it was suggested that the Monitoring Officer would take account of the complainant's views on the suggested resolution when making the decision, rather than asking the complainant to agree to it. This removed the possibility of a situation where the matter would have to proceed to a full hearing purely on the basis that the complainant was not in full agreement with the local resolution.

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Throughout the year, a number of issues had been raised which could be addressed in the arrangements to improve dealing with complaints, including incorporating more information on possible sanctions should a breach occur. In particular, the Standards Committee and Monitoring Officer would publish the breach on the subject member's information page on the Council's website. This would act as a deterrent to members but more importantly, would ensure transparency for members of the public, thereby increasing the public's confidence in the standards system and enabling the electorate to have important information before them. Timescales would be set for any sanction imposed, ensuring that all parties were clear of their obligations. An option had also been included to allow the Committee to take such steps as appropriate, reasonable and proportionate to the particular conduct that had amounted to the breach. This gave the Committee greater control and discretion over the type of sanctions to be imposed but also maintained a fair and proportionate outcome for the subject member.

An option had been included to allow for a particularly complex matter to be heard by the full Standards Committee, rather than a sub-committee. This decision would be made by the Monitoring Officer and the Chair of the Standards Committee. The Terms of Reference for the Committee would be revised to allow for complex matters to be heard by the full Committee.

A new paragraph had been inserted dealing with applications for disclosure of information during an investigation. It was important to ensure that information and evidence that had been gathered during an investigation was kept confidential, in order to protect the integrity of the process.

The complaint form had been amended to include reference to the Confidential Informant Process and to seek clarification as to whether the complainant had already raised the subject of their complaint with the member concerned.

The Independent Persons had been consulted on the changes to the arrangements and their views had been taken into account.

**Resolved to recommend to Council:-**

- (1) that the revised arrangements for dealing with standards allegations under the Localism Act 2011, as set out at Appendix 1, be approved;
- (2) that, subject to (1) above, the Terms of Reference for the Standards Committee and Sub Committee be revised to allow for complex matters to be heard by the full Standards Committee, rather than the Standards Sub Committee.

25/16

**Review of Member Code of Conduct**

On 18<sup>th</sup> October 2016, the Council approved the revised Members Code of Conduct in accordance with good practice.

Clarity was required in relation to declarations of interest, specifically the disclosure of names of family members and close associates. There was currently inconsistency in the naming of third parties and it was proposed that the Code should clarify the process. The names of people given by members would not be published on the public register but would be kept securely by the Council; this would ensure that the member had fully disclosed to the Council the interest, whilst protecting the third party's data.

Members expressed concern that the definition of a member of family did not include in-laws or cousins. It was considered that in-laws should be added to paragraph 6 of definitions and that 'for example, cousins' be added to paragraph 7.

The Seven Principles of Public Life (also known as the Nolan Principles) were key to the role of members. Following events at other local authorities where the conduct and character of members had been questioned in relation to safeguarding issues, it was important to ensure that members were accountable and open.

Members had an important role to play in maintaining and scrutinising services relating to children and adults and it was proposed that the Council should introduce criminal records checks for members sitting on committees/panels specifically dealing with vulnerable adults and children.

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The Committee was concerned that only those members in specific roles would undertake checks and was of the opinion that all members of the Council should be checked, along with persons sitting on Council bodies from external organisations. Consideration of the matter was, therefore, deferred to a future meeting pending further investigation.

**Resolved** that a further report on the Review of the Member Code of Conduct be submitted to a future meeting to enable officers to undertake further investigation around criminal record checks for elected members.

26/16

### Review of Protocol for Independent Persons

The Authority had a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by Members. To comply with this duty, the Council had to appoint Independent Persons. Recent complaints and discussions with the current Independent Persons had highlighted improvements that could be made to the Protocol for Independent Persons.

The Protocol made the role of Independent Persons, and their relationship with the authority and others, clear and set out the methods by which different parties may consult with the Independent Persons. The Protocol also set out the relationship the Independent Persons would have with the Standards Committee.

The Independent Persons had been consulted on the Protocol and their views had been taken into consideration.

**Resolved** that the Protocol for Independent Persons, appointed for dealing with standards allegations under the Localism Act 2011, as set out in Appendix 2, be approved and adopted.

27/16

Committee on Standards in Public Life – Striking the Balance – Upholding the Seven Principles in Regulation

Within its terms of reference, Standards Committee had a duty to promote high ethical standards amongst members. As well as complying with legislation and guidance, the Standards Committee needed to demonstrate learning from issues arising from local investigations and case law. Furthermore, it was advisable for the Standards Committee to be kept informed of any issues arising out of the reports from the Committee on Standards in Public Life which were publicised as they may also add to learning at the local level.

On 15<sup>th</sup> September, 2016 the Committee on Standards in Public Life published a report entitled ‘Striking the Balance Upholding the Seven Principles of Public Life in Regulation’. The report reviewed how regulatory bodies in the United Kingdom upheld the Seven Principles of Public Life, also known as the Nolan Principles. As local authorities had regulatory functions, the report was relevant. The Committee was reassured by its research which found that, “*on the whole, regulatory bodies are committed to maintaining these standards.*” The Committee grouped best practice into six key areas, so that all regulatory bodies could check the approach of their own organisation to the ethical standards they should be upholding. These areas were Governance, Codes of Conduct, Revolving Door, Independence, Transparency and External Leadership.

The Committee welcomed the report and wished to bring the best practice to the attention of Council, as outlined in Appendix 3.

**Resolved to recommend to Council** that the best practice identified within the Committee on Standards in Public Life report ‘Striking the Balance – Upholding the Seven Principles of Public Life in Regulation’, as set out in Appendix 3, be noted.

28/16

Allegations Update

The Committee received an update on complaints received during the 2016/17 period in respect of member conduct and the outcome of those complaints.

29/16

**Case Summary**

The Committee considered a case about the importance of the Code of Conduct complaints process remaining confidential.

A complaint was made against a councillor, this was considered by the authority and it was decided that no further action should be taken. There was an expectation of privacy for conduct investigations as the release of information could cause unwarranted damage or distress to the named councillor.

In this case, the Tribunal stated that “If for any reason the full details of member complaints and the consequential rebuttals are released to the world in response to requests for information, all confidence in the process would be lost. The process and regime would be undermined by a resultant lack of candour in complained about members’ responses to complaints and, potentially, in the detail and context of complaints made against them. Therefore it is important that this process remains confidential.”

(Meeting ended at 3.20 pm)

Contact Officer: Trisha Newton Democratic Services Unit 0121 569 3193
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# Arrangements for dealing with standards allegations under the Localism Act 2011

## 1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct. There is a separate procedure for dealing with Whistleblowing complaints

Under the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s member Code of Conduct can be investigated and decisions made on such allegations.

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

## 2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority’s website and on request from the Sandwell Council House, Oldbury.

## 3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer  
Sandwell Council House  
Oldbury  
B69 3DE

Or –

[Meic.SullivanGould@sandwell.gov.uk](mailto:Meic.SullivanGould@sandwell.gov.uk)

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from the Sandwell Council House, Oldbury.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. The process for deciding how to deal with anonymous complaints is set out in the attached charts.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

#### **4 Confidential Informant Process**

Any member of staff (including schools staff) within Sandwell Metropolitan Borough Council can report information anonymously to the Monitoring Officer who may authorise an investigation. The Informant may be interviewed as part of the investigation process, but will not need to reveal that they are the complainant. It will then be for the Investigator to confirm or otherwise the facts of the matter and come to a conclusion.

This process is only available to employees of Sandwell Metropolitan Borough Council. If the employee came under duress or other pressure from Councillors or Senior Officers to undertake improper behaviour the Monitoring Officer will expect them to be candid about that and it is unlikely any action will be taken against them. If the employee has colluded with the wrongdoing and benefitted from it then they cannot expect any sympathetic treatment.

## **5 Will your complaint be investigated?**

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint.

Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. The Monitoring Officer must consult with the Independent Person before deciding whether or not a formal investigation should be undertaken.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.

The member against whom your complaint is directed, may seek the views of the Independent Person at any stage in the process. This could be to provide a view on the complaint itself, the process under which the complaint will be dealt with or to provide a view on any other query the member may have relating to the complaint. An Independent Person's role is not to act as an 'advisor' to the subject member.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you do not agree with that offer, the Monitoring Officer will take account of your views in deciding whether the complaint merits formal investigation.

The Monitoring Officer will complete a decision notice, whether or not a matter is to be investigated, which will outline the reasons for the decision.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

The Monitoring Officer will normally only decide to investigate a complaint about alleged conduct that happened within six months of the date of receipt of the complaint. If the Monitoring Officer is of the view that exceptional circumstances apply, then this time limit may be waived.

The Monitoring Officer will not progress complaints which are repetitious or vexatious. If such a complaint is made by a fellow member, the Monitoring Officer will consider whether that member has acted otherwise than in accordance with the Code of Conduct for members in making the complaint and whether such action may amount to a breach of the same.

It should be noted that the recording of formal or informal meetings involving any Council issues is strictly prohibited. Covert recording without an individual's consent may be deemed a breach of data protection, a breach of the individual's human rights, a breach of the contract of employment with the Council and a breach of the Members' Code of Conduct.

## **6 How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer/Officers, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The investigation will be completed in accordance with the Protocol for Dealing with Investigations into Standards Allegations under the Localism Act 2011, which is a separate document.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

The Investigating Officer may ask the subject member to attend an interview about your complaint. The interview will normally be tape recorded, unless the member objects to this. This ensures that there is no ambiguity as to the matters discussed in interview.

If at any point during the investigation, the Investigating Officer forms the opinion that the investigation should cease, he/she will consult with the Monitoring Officer, who may consult the Independent Person and take a decision to stop the investigation at any stage.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send a copy of that draft report, in confidence, to the Monitoring Officer. The Monitoring Officer will then send the report to you and to the member concerned. At this stage you and the subject member as well as the Monitoring Officer can identify any matter in that draft report which you disagree with or which you consider requires more consideration. You and the subject member will be given a period of 14 days to comment on the draft report.

Having received and taken account of any comments made on the draft report and undertaking any further investigation he/she considers relevant and appropriate, the Investigating Officer will send his/her final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or has other concerns relating to the complaint or the investigation report, he may ask the Investigating Officer to reconsider his/her report. The Monitoring Officer may consult the Independent Person about this.

**8 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Member Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a Sub-Committee of the Standards Committee or, after consulting the Independent Person, seek local resolution.

## 8.1 Local Resolution

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 Person and with you as complainant. If you as the complainant do not agree with the suggested resolution, the Monitoring Officer will take account of your views in deciding whether to proceed with the local resolution or refer it for a local hearing. It is however, the Monitoring Officer's decision. The purpose of the local resolution is to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority.

The range of resolutions that can be imposed is wide and each resolution will be tailored to fit the particular behaviour that has resulted in a breach of the Member Code of Conduct, for example, training on a specific issue. The Monitoring Officer will set a reasonable timescale for compliance with the local resolution.

If the member complies with the suggested resolution, within the timescale set by the Monitoring Officer, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action. If the member fails to comply with the resolution within the timescale set, the matter will be referred to the Standards Committee and Full Council for information.

The breach of the Member Code of Conduct and the resolution imposed will be publicised on the member's profile on the Council's website for a period to be determined by the Monitoring Officer, which is to be no less than the time required for compliance with any sanction. If a member fails to comply with a sanction in the timescale set, the information will remain on the profile until compliance is achieved.

## 8.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake the suggested resolution, then the Monitoring Officer will report the Investigating Officer's report to a Sub-Committee of the Standards Committee which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. The local hearing will normally take place within six weeks of the decision to proceed to a local hearing being made.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Sub-Committee of the Standards Committee may issue directions as to the manner in which the hearing will be conducted. If the matter to be heard is particularly complex, consideration may be given, by the Monitoring Officer and the Chair of the Committee, to have the hearing in front of the full Standards Committee rather than a sub-committee.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Member Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Sub Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub Committee as to why he/she considers that he/she did not fail to comply with the Member Code of Conduct.

If the Sub-Committee, with the benefit of any advice from the Independent Person, conclude that the member did not fail to comply with the Member Code of Conduct, they may dismiss the complaint. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct.

In doing this, the Sub-Committee will give the member an opportunity to make representations to the Sub-Committee and will consult the Independent Person.

**9 What action can the Sub Committee of the Standards Committee take where a member has failed to comply with the Member Code of Conduct?**

The Council has delegated to the Standards Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly a Sub-Committee, on behalf of the Standards Committee, will publish the breach of the code of conduct and the sanction imposed on the member's profile on the Council's website for a period of time to be determined by the Sub Committee, which is to be no less than the time required for compliance with any sanction. If a member fails to comply with a sanction in the timescale set, the information will remain on the profile until compliance is achieved. The Sub Committee will also report its findings to Council for information.

The Standards Committee may –

- 9.1 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 9.2 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 9.3 Instruct the Monitoring Officer to arrange training for the member;
- 9.4 Recommend to Council to remove from all outside appointments to which he/she has been appointed or nominated by the authority;
- 9.5 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
- 9.6 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.



Take such steps as appropriate, reasonable and proportionate to the particular conduct that amounted to the breach of the code of conduct.

The Standards Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

## **10 What happens at the end of the hearing?**

At the end of the hearing, the Chair will state the decision of the Sub-Committee as to whether the member failed to comply with the Member Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the member and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

If the member complies with the sanction imposed by the Standards Committee, within the timescale set, the Monitoring Officer will report the matter to the Standards Committee for information. If the member fails to comply with the sanction within the timescale set, the matter will be referred to the Standards Committee and Full Council for information.

## **11 Who are the Standards Committee?**

The Standards Committee is appointed each year by the Council. Details of the current membership of the Committee can be found on the Council's web site on the Committee Management Information System.

The Independent Person(s) is/are invited to attend all meetings of the Standards Committee and his/her/their views are sought and taken into consideration before a Sub Committee of the Standards Committee takes any decision on consideration of an investigation report on whether the member's conduct constitutes a failure to comply with the Member Code of Conduct and as to any action to be taken following a finding of failure to comply with the Member Code of Conduct.

## **12 Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she –

- 12.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 12.2 Is a relative, or close friend, of a person within paragraph 11.1 above. For this purpose, “relative” means –
  - 12.2.1 Spouse or civil partner;
  - 12.2.2 Living with the other person as husband and wife or as if they were civil partners;
  - 12.2.3 Grandparent of the other person;
  - 12.2.4 A lineal descendent of a grandparent of the other person;
  - 12.2.5 A parent, sibling or child of a person within paragraphs 11.2.1 or 11.2.2;
  - 12.2.6 A spouse or civil partner of a person within paragraphs 11.2.3, 11.2.4 or 11.2.5; or
  - 12.2.7 Living with a person within paragraphs 11.2.3, 11.2.4 or 11.2.5 as husband and wife or as if they were civil partners.

### **13 Publication of Standards Investigations**

The Council acknowledges that there is a need to balance the public interest in transparency of these types of matters with the requirement of fairness to a member who is subject to an allegation.

The contents of the initial assessment of a complaint and the investigation will remain confidential.

When a matter progresses to a local hearing before a Sub Committee of the Standards Committee, the hearing will be in public, unless there is a particular reason for the information that will be disclosed during it, to be exempt. The Monitoring Officer will make this decision prior to the hearing in consultation with the Independent Persons and the Chair of the Committee. Each case will be determined on its own merits.

In making this decision, particular consideration will be given to the necessity of transparency, the requirements of witnesses, any Data Protection issues that may become relevant and schedule 12A of the Local Government Act 1972 which outlines what exempt information is.

Consideration will also be given to the disclosure of the papers prior to and or after the hearing and whether any redactions of the papers need to be made.

## **14 Access to Information during an Investigation**

During an investigation and any subsequent hearing, it is important to ensure that information and evidence that has been gathered, is kept confidential in order to protect the integrity of the process. With that in mind, the access to certain information will be restricted.

### **13.1 Subject Access Requests**

The Data Protection Act 1998 entitles individuals (both members of the public and employees) to access personal data held about them by Sandwell Metropolitan Borough Council. These requests are referred to as Subject Access Requests.

There are certain circumstances where the Council can legitimately withhold personal information, if one of the exemptions within the Data Protection Act applies. Information which has been obtained during an investigation under these arrangements is likely to be exempt, under the Act, as it is likely that disclosure would prejudice the prevention and detection of crime and/or prejudice certain regulatory functions. Therefore, if a Subject Access Request is made during an investigation, relating to information relevant to the investigation, it is unlikely that it will be granted. The final decision will be made by the Monitoring Officer in consultation with the Information Management Unit of the Council.

### **13.2 Freedom of Information Requests**

The Freedom of Information Act 2000 places a statutory requirement on Sandwell Metropolitan Borough Council to provide information to the public. Any individual has a right to request information held by the Council, regardless of where they reside. This right also extends to employees, pressure groups, businesses, politicians and members of the press.

There are certain circumstances where information is exempt from disclosure. Information which has been obtained during an investigation under these arrangements is likely to be exempt as it is likely that the information is being held for the purposes of a criminal investigation; is or has been held for criminal proceedings conducted by a public authority; or was obtained or recorded for various investigative functions and relates to the obtaining of information from confidential sources.

The information described is exempt only where the public authority has a duty, or the power, to carry out investigations. The Council does have a duty and/or power to carry out an investigation in accordance with the Localism Act 2011, therefore, if a Freedom of Information Request is made during an investigation, relating to information relevant to the investigation, it is unlikely that it will be granted. The final decision will be made by the Monitoring Officer in consultation with the Information Management Unit of the Council.

## **15 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Standards Committee in consultation with the Monitoring Officer and/or Independent Person as appropriate the right to depart from these arrangements (as far as they relate to the business of a Sub Committee of the Standards Committee) where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **16 Appeals**

There is no right of appeal for you as complainant against a decision of a Sub Committee of the Standards Committee.

If you feel that the authority has failed to deal with your complaint properly, you may seek independent legal advice or contact the Local Government Ombudsman.

# COMPLAINT FORM

## Allegation of Breach(es) of Code of Conduct for Members

(Please read the 'INFORMATION FOR POTENTIAL COMPLAINANTS' before completing this Form).

### Your details

1. Please provide us with your name and contact details. Anonymous complaints may be investigated if they indicate a potentially exceptionally serious or significant matter and the complaint is accompanied by sufficient documentary or other supportive evidence. The Council's policy on anonymous member complaints is set out in the Initial Assessment of Standards Complaints Assessment and Review Criteria which is available from the Monitoring Officer

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Contact telephone:</b>	
<b>Email address:</b>	
<b>Signature:</b>	
<b>Date of complaint:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

The following people will see this Form:

- Members of the Assessment Sub-Committee
- The Monitoring Officer of the authority and appropriate officers supporting the Monitoring Officer.

A summary of your complaint may also be shared, by the relevant Assessment Sub-Committee or the Monitoring Officer, on the Sub-Committee's behalf, with the Member(s) you are complaining against. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete **Section 6** of this Form and you may also discuss your reasons or concerns with the Council's Monitoring Officer.

2. Please tell us which complainant type best describes you:

- A member of the public
- An elected or co-opted Member of the Council
- An independent member of the Standards Committee
- A Member of Parliament
- Chief Executive or other Council employee, contractor or agent of the Council.
- A Monitoring Officer
- Other ( )

3. Equality Monitoring Form - Please complete the Form attached at the back.

4. Please provide us with the name of the Member(s) you believe have breached the Code of Conduct for Members of the Council:

Title	First name	Last name

5. Please explain in this section (or on separate sheets) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct. You should also supply dates, documentary evidence and details of any witnesses that you believe would substantiate the alleged breach(es).

It is important that you provide all the information you wish to have taken into account by the Assessment Sub-Committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the Member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said or did to insult you.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).
- If your allegation(s) relate to behaviour or conduct that occurred some time ago clearly explain why your complaint was not made earlier.

Please provide us with the details of your complaint. Please identify, if possible, which part of the Members Code of Conduct you consider has not been complied with.

***(Complete on separate sheet(s), as necessary)***

**Only complete this next section if you are requesting that your identity is kept confidential**

6. In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless there are exceptional circumstances that indicate that this should be done (please see Information for Potential Complainants).

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Assessment Sub-Committee will have regard to issues referred to in the flowchart attached as Appendix 2 to the Initial Assessment of Standards Complaints Assessment and Review Criteria. The Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your personal and complaint details even if you have expressly asked us not to.

Please be aware that there is a Confidential Informant Process for Sandwell Metropolitan Borough Council employees; any member of staff within Sandwell Metropolitan Borough Council can report information anonymously to the Monitoring Officer who may authorise an investigation. The Informant may be interviewed as part of the investigation process, but will not need to reveal that they are the complainant. It will then be for the Investigator to confirm or otherwise the facts of the matter and come to a conclusion. Please see a copy of the Council's 'arrangements for dealing with standards allegations under the Localism Act 2011' or speak to the Monitoring Officer for full details.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:



7. Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

(Continue on separate sheet(s), as necessary)

7. Please indicate whether you have raised your complaint directly with the member concerned and if so what response you received.

(Continue on separate sheet(s), as necessary)

## **Additional Information**

8. Complaints must be submitted in writing. This includes fax and electronic submissions. Please use this Form to submit your complaint.
  
9. In line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.
  
10. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.

Once a valid complaint relating to an alleged breach of the Code of Conduct for Members has been received by the Monitoring Officer, it will be presented to a meeting of the Assessment Sub-Committee for consideration and decision. You and the Member against whom the complaint has been made will not be allowed to attend the deliberations of the Sub-Committee as the matter will be considered in private. You will be notified of the decision and any further stages in the process.

**Sandwell Metropolitan Borough Council  
Equality Monitoring Form  
Information for Monitoring Purposes Only**

**Ethnic Classification Categories to be used by Sandwell Metropolitan Borough:-**

**1. White**

- British
- Irish
- Any other White background (please write in)

**2. Mixed**

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed background (please write in)

**3. Asian or Asian British**

- Indian
- Sikh
- Pakistani
- Bangladeshi
- Any other Asian background (please write in)

**4. Black or Black British**

- Caribbean
- African
- Any other Black background (please write in)

**5. Other ethnic group**

- Chinese
- Yemeni
- Any other (please write in)

# Protocol for Dealing with Investigations into Standards Allegations under the Localism Act 2011

## 1 Context

This protocol is to be used when conducting investigations into standards allegations under the Localism Act 2011. It should be read in conjunction with the 'arrangements' made under the Localism Act 2011.

## 2 Steps of the investigation

### Initial Decision

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of the complaint. The Monitoring Officer must consult with the Independent Person before deciding whether a formal investigation should be undertaken.

The Monitoring Officer will complete a decision notice, which can be found at appendix 1, whether or not a matter is to be investigated, which will outline the reasons for the decision. This will be sent to:

- Complainant
- Member against whom the complaint was made
- Investigator

If the Monitoring Officer decides that the complaint merits investigation, investigators will be appointed.

### Investigation Procedure

At the beginning of the investigation an investigation plan will be completed by the investigators overseen by the Monitoring Officer, which can be found at appendix 2. The plan will identify key dates, behavior alleged, the relevant parts of the code of conduct, issues for determination, evidence required/obtained and the witnesses to be interviewed.

When witnesses are interviewed, a statement will be taken from them which they will be able to check and sign. The format for such a statement can be found at appendix 3.

It is likely that the subject member will be interviewed at the end of the investigation; however this will be decided on a case by case basis. The interview will normally be tape recorded, unless the member objects to this. This ensures that there is no ambiguity as to the matters discussed in interview. A template interview plan can be found at appendix 4

The investigation will be reviewed on a weekly basis by the investigators, in consultation with the monitoring officer. The investigation review sheet will be completed on each occasion, which can be found at appendix 5.

If at any point during the investigation, the Investigating Officer forms the opinion that the investigation should cease, he/she will consult with the Monitoring Officer, who may consult the Independent Person and take a decision to stop the investigation at any stage. The Monitoring Officer will complete a Decision Notice to Cease an Investigation, which can be found at appendix 6.

### **Completion of Investigation**

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Monitoring Officer, the complainant and to the member concerned. At this stage the complainant and the subject member can identify any matter in that draft report which they disagree with or which they consider requires more consideration and will be given a period of 14 days to comment on the draft report.

Having received any comments, the Investigating Officer will assess them and complete a Comments Assessment Form which can be found at appendix 7. Once the Investigating Officer has completed this analysis and made any necessary amendments to the report, the Investigating Officer will send his/her final report to the Monitoring Officer.

## **Decision Notice of The Monitoring Officer for Dealing with Standards Allegations Under the Localism Act 2011**

**Reference:**

**Complainants:**

**Subject Member:**

**Person Conducting the Assessment :**

**Date of Assessment:**

### **Complaint**

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Official Capacity**

The Monitoring Officer has considered whether the conduct alleged occurred when the subject member was acting in his/her official capacity and has at this stage determined that he/she [was] [was not].

### **Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to [refer the complaint for investigation] [take no further action].

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

### **Parameters of Investigation**

[Include brief instruction to investigators on the scope of the investigation; possible witnesses, relevant documents, issues to focus on and timescales]

### **Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- Investigator

### **What happens now?**

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

### **Signed:**

### **Date:**

### **Print name:**

Monitoring Officer of Sandwell Metropolitan Borough Council.

### **The Monitoring Officer**

Governance Services  
Sandwell Metropolitan Borough Council  
Oldbury Council House  
Freeth Street  
Oldbury  
B69 3DE

**Investigation Plan  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

<b>Date received by monitoring officer:</b>	
<b>Date referred to investigator:</b>	

<b>Subject member:</b>		<b>Complainant:</b>	
<b>Authority:</b>		<b>Investigator:</b>	

**Target for monitoring officer's receipt of draft report**

<b>Date due:</b>	
<b>Explanation:</b>	

**Target for issue of draft report**

<b>Date due:</b>	
<b>Explanation:</b>	

**Target for issue of final report**

<b>Date due:</b>	
<b>Explanation:</b>	



## Case analysis

<b>Behaviour alleged</b>	
<b>Relevant Code paragraphs</b>	
<b>Issues for determination</b>	
<b>Evidence required</b>	
<b>Evidence obtained</b>	

## Possible witnesses

<b>Name of Witness</b>	
<b>Issue they may address</b>	
<b>Date of interview</b>	

### Possible witnesses

<b>Name of Witness</b>	
<b>Issue they may address</b>	
<b>Date of interview</b>	

### Possible witnesses

<b>Name of Witness</b>	
<b>Issue they may address</b>	
<b>Date of interview</b>	

## Other Matters

Identify any thoughts/lines of inquiry not outlined in the table and also highlight any problems in the referral process.

Completed by:

Date:



**Interview Plan  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

<b>Interviewee:</b>	
---------------------	--

<b>Subject member:</b>		<b>Interviewer:</b>	
<b>Authority:</b>		<b>Date:</b>	

<b>Nature of complaint</b>

<b>Purpose of interview</b>

**Facts already established (which relate to purpose of interview)**

[Empty green box for recording facts already established]

**Facts to be established (which relate to purpose of interview)**

[Empty green box for recording facts to be established]

**Record of disclosure to witness before interview**

[Empty green box for recording disclosure to witness before interview]

**Planned disclosure to witness during interview**

[Empty green box for recording planned disclosure to witness during interview]

Areas to be covered in interview	Key questions

**Investigation Plan Review Sheet  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

<b>Date:</b>	
<b>Investigator:</b>	

<b>Subject member:</b>		<b>Complainant:</b>	
------------------------	--	---------------------	--

**Reason for Review**

<input type="checkbox"/>	New allegation
<input type="checkbox"/>	Additional witnesses / evidence required
<input type="checkbox"/>	Periodic Review

**Details relating to above**

**Review of Targets**

<b>Revised draft report target:</b>	
<b>Revised date of final report target:</b>	



## Reasons for revisions



**Completed by:**

**Date:**

## **Decision Notice of The Monitoring Officer for Dealing with Standards Allegations Under the Localism Act 2011 to Cease an Investigation**

**Reference:**

**Complainants:**

**Subject Member:**

**Person Conducting the Assessment:**

**Date of Assessment:**

### **Complaint**

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

### **Complaint summary**

[Summarise complaint in numbered paragraphs]

### **Original Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to refer the complaint for investigation on the [insert date].

### **Investigation Summary**

The investigation began on the [insert date]. To date, the investigation has revealed that [insert brief description of what has happened in the investigation so far].

### **Decision to Cease Investigation**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to cease the investigation. The reasons for this decision are as follows [insert reasons].

## **Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

### **Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- Investigator

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

**Signed:**

**Date:**

**Print name:**

Monitoring Officer of Sandwell Metropolitan Borough Council.

**The Monitoring Officer**

Governance Services

Sandwell Metropolitan Borough Council

Oldbury Council House

Freeth Street

Oldbury

B69 3DE

**Comments Assessment Matrix  
For Dealing with Standards Allegations Under the Localism Act 2011**

**Case No:**

<b>Date:</b>	
<b>Investigator:</b>	

<b>Subject member:</b>		<b>Complainant:</b>	
------------------------	--	---------------------	--

<b>Comments Made by:</b>	
<b>Date Received:</b>	

<b>Comment Received</b>	<b>Response</b>	<b>Amendment Necessary?</b>



# Protocol for Independent Persons Appointed under the Localism Act 2011

## 1. Context

This protocol is intended to be used by Independent Persons who have been appointed under section 28 (7) of the Localism Act 2011, when undertaking their duties.

It will make clear the role of the independent persons and their relationship with the authority and others.

This protocol should be read in conjunction with the Council's "Arrangements" for dealing with standards allegations under the Localism Act 2011.

## 2. Role of the Independent Persons

Independent Persons are trusted, experienced and objective consultants who must remain (as the name suggests) independent at all times.

Independent Persons views are to be sought, and taken into account, by the authority before it makes its decision on an allegation against a member or co-opted member, that it has decided to investigate.

The views of the Independent Persons can be sought by the authority and by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation. An Independent Person's role is not to act as an 'advisor' to the subject member.

In practice, it will be the Monitoring Officer or Deputy Monitoring Officer from the authority who will contact the Independent Persons for their views.

The views of the Independent Persons may also be taken into account by the Monitoring Officer at various stages during the informal process.

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.

### **3. Methods of Consultation**

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.

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

When providing their view to the Subject Member, the same principles apply.

The Monitoring Officer will advise the Subject Member of their right to contact the Independent Persons and will provide contact details. It should be made clear to the Subject Member by the Independent Person that any communication between them is potentially disclosable to the authority. Communications between the authority and the Independent Persons may also be disclosable to the subject member.

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.

#### **4. Relationship with the Standards Committee**

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.

#### **5. Distinct Roles**

The Local Authority does not want to fetter the independence of the Independent Person; therefore, we will not allocate specific roles (e.g. one to advise the Council and one to advise the Subject Member). If an Independent Person is consulted by the Subject Member, this would not preclude the Complainant consulting the same Independent Person in the same matter or advising the Standards Sub-Committee or Committee.

#### **6. Other Considerations**

Where the Independent Person feels that they cannot provide their views due to a conflict of interest, they should advise the Monitoring Officer of this without delay.

The Independent Person may at any time raise any concerns about standards or the implementation of the process with the authority's Chief Executive, the Monitoring Officer and/or the Chair of the Standards Committee.

The Independent Persons may be consulted on any proposed changes to the 'arrangements', the Code of Conduct and any other procedures or policies involving the handling of allegations.

The Independent Persons will agree to sign a Code of Conduct, including a register of interests to be held by the Monitoring Officer and will declare any relevant interests in relation to cases to the Monitoring Officer.

The Independent Persons shall not make any comments to the media on any matter without prior the agreement of the Monitoring Officer.

The Independent Persons may be requested by the Monitoring Officer or Standards Committee to assist in any training on conduct issues as appropriate.



# Executive Summary

1. Almost all products, services and activities in the United Kingdom are regulated in one way or another. From the environment to finance, education to healthcare, and transport to energy, regulation plays a key role in public life and impacts significantly on markets, services and professional careers. Regulation contributes to a thriving, safe and fair society.
2. Given the distinctive and powerful role which bodies performing a regulatory function play in public life, the Committee undertook a review of the extent to which they uphold the Seven Principles. This Review is not intended as a commentary on the need or otherwise for regulation, or its effectiveness in particular situations. These are important issues which receive substantial, and sometimes controversial, attention elsewhere. The review does, however, reflect our fundamental belief that a regulatory body should conduct itself in ways which are – and are seen to be – ethically acceptable. This is an important aspect of its overall effectiveness.
3. We undertook the review by surveying a range of regulators, conducting interviews with selected bodies, holding roundtables with academics, regulators and stakeholders, and commissioning four pieces of academic research. We owe our thanks to all those who gave their time so generously.
4. The Committee has been struck by the complexity and disparity of the regulatory landscape, driven by historical and political contexts. Regulators comprise a patchwork of large and small bodies across sectors. They also have a variety of statutory powers, functions, governance and staffing arrangements, as well as standards of practice. Although we do not directly consider self-regulatory regimes as part of this review, much of the best practice identified here will be applicable to those regulators.
5. The commonality they share though is the need to maintain their integrity through independence – both from government and those they regulate – avoiding undue influence and ensuring the decisions they make are fair, well-reasoned and evidence-based. It is a complex space to negotiate and a difficult path to tread.
6. In light of the result of the June 2016 referendum in which the British people voted to leave the European Union (EU), the UK's regulatory landscape is likely to be substantially restructured in the coming years. Given the importance of supranational legislation for the UK's regulatory environment, domestic regulatory bodies are likely to become all the more important as the UK withdraws from the EU's legal framework. In this context, the Committee believes that maintaining the highest ethical standards within regulatory bodies continues to be of the utmost importance.
7. This review was intended as a 'health check' of an important and distinctive slice of public life which the Committee has not previously examined in detail. It was not prompted by any particular trigger event. During the course of the review, however, we came across variances in ethical standards which cause us some concern. Recognising the breadth and range of regulatory bodies, we do not envisage a 'one size fits all' approach. But across all regulators, we believe strongly that the adoption of good practice identified by the Committee would enhance ethical standards of regulators which, in turn, would have a significant impact on regulatory effectiveness.
8. The Committee has grouped this best practice into six key areas, so that all regulatory bodies can check the approach of their own organisation to the ethical standards they should be upholding. We believe that, as far as possible, these can be achieved without the need for statutory changes.

## Our Recommendations for Best Practice

### Governance

9. Leadership in ethical standards is determined, in part, by the governance arrangements of the regulatory body. These governance arrangements are critical in helping to set an ethical tone. Regulators' governance should promote collective decision making to help the organisation exercise fair and balanced judgement. The Committee's review has shown that the upholding of the Seven Principles of Public Life in regulatory bodies is dependent on the organisation's leadership, and their efforts to prioritise and promote these standards.
10. Regulatory boards need to recognise the importance of maintaining the highest behavioural standards and to encourage the same behaviour by their staff, so as to promote trust from the public, those they regulate and the government. Boards should therefore have processes in place to ensure that high standards of ethical behaviour run throughout the body.

**Best Practice: The board is responsible for providing leadership and setting standards on ethical behaviour within the organisation. The board should seek regular evidence-based assurance that the highest ethical standards are being upheld.**

11. Governance structures should ensure that power is not overly concentrated in one individual. This can help mitigate the risks that individuals might act for private gain or pursue their own agenda in regulation.
12. Non-executive or lay board members provide an important external perspective, bringing independent judgement and a challenge function, which is vital when the organisation experiences inappropriate pressure from the government or from those being regulated.

**Best Practice: Non-executive and lay members of boards – whether statutory or advisory – have an important role to play in ensuring that the regulatory body is beyond reproach in following the Principles of Public Life. All board members have a responsibility to ensure that adequate discussion of issues occurs before decisions are made.**

**Best Practice: Corporate governance arrangements should minimise the risk of conflicts of interest and individuals acting for private gain.**

13. On-going scrutiny of standards of behaviour in organisations – including openness and transparency – is key to ensuring that regulatory bodies are able to manage ethical challenges. Yet, the Committee has found that publicly-accessible registers of meetings, conflicts of interest and gifts and hospitality are not always maintained by regulatory bodies. In some instances these records are published in formats which prevent the public from easily holding the regulator to account. It is the responsibility of accounting officers or their equivalent to ensure that ethical practices are upheld throughout the organisation.

**Best Practice: Compliance with ethical standards of conduct should be confirmed in the published annual certification by accounting officers. Regular, published information should include up-to-date registers of meetings, conflicts of interest and gifts and hospitality. These should be publicly accessible.**

## Codes of Conduct

14. The Committee welcomes the evidence that codes of conduct setting out standards of expected behaviour are widespread across regulatory bodies. However, the extent to which these codes are embedded in the day-to-day practice of the regulators was varied and of uneven quality, sometimes within the same organisation. The Committee saw evidence of cases where staff working alongside each other, with the same access to highly sensitive information, were not covered by the same code of conduct.
15. The Committee is concerned about this inconsistency and the apparent lack of clarity and knowledge within some regulatory bodies about application of their code(s) of conduct to their staff and non-executive members. It is reasonable to expect that a code of conduct should cover all personnel.

**Best Practice: At least one code of conduct should cover all personnel. This includes executive and non-executive board members, employees, secondees, consultants, and contractors.**

**Best Practice: A regulatory body's code of conduct should be at least equivalent to the Civil Service Code, and reflect the ethical risks faced by the regulatory body.**

16. For a code of conduct to have an impact on individuals' behaviour, it is essential that the standards established in the code are embedded within the culture and processes of the organisation.

**Best Practice: The standards established in the code of conduct should be evident in the recruitment and appraisal processes of the organisation. Staff should be made aware of the importance and significance of upholding these standards at their induction and through regular training processes.**

## Revolving Door

17. Whilst the 'revolving door' of staff moving between regulatory bodies and the regulated entities or profession can bring benefits in terms of technical knowledge to the regulator and promote compliance within the regulated entities, it brings its own risks. Neither the appointment of individuals from the regulated sector, nor their movement to it, need be problematic. But, if not properly managed with adequate safeguards, the revolving door can be a serious threat to the regulator's essential integrity and independence.
18. This is not only true for board members and senior executives, but also for operational staff at lower levels of the organisation who may have more detailed knowledge about competitors' confidential information or regulatory intentions than those at the top. In order to ensure that these moves are conducted with integrity, and to promote trust in the regulatory body, regulators should be clear to their staff when they join the organisation about the post-employment procedures for all board members and key staff.
19. A mixed picture has emerged in the policies and procedures for managing the propriety issues around movement of personnel. Of the regulators we surveyed, under a third had policies on managing the movement of staff to those they regulate. Even fewer had policies on the recruitment of staff from the organisation or profession they regulate. The Committee is concerned that, where these moves remain unmanaged, regulatory independence is under threat.

**Best Practice: Policies and procedures should be in place to manage 'revolving door' situations where individuals come from, or go to, the regulated sector. These should apply to all individuals at any level of the organisation.**

**Best Practice: Where board members and staff are recruited from the regulated sector, relevant safeguards should be considered, such as isolation from the regulation of recent employers or exclusion from key meetings.**

**Best Practice: At every board meeting, members should be asked to declare any actual or potential conflict of interest and these should be publicly recorded. Where the board agrees that a conflict is inappropriate, the member should be recused from both the discussion and decision making.**

**Best Practice: The process for departing board members and senior executives should be in line with arrangements for ministers and senior civil servants as determined by the Advisory Committee on Business Appointments. In order to ensure that such moves are conducted with integrity, and to promote trust in the regulatory body, regulators should be entirely transparent about post-employment destinations and restrictions.**

**Best Practice: Additional safeguards should be considered for anyone who leaves the regulatory body. These include explicit prohibitions on disclosing confidential information, restrictions on contact with the regulator, and gardening leave requirements.**

**Best Practice: All individuals taking up positions subject to pre- and post-employment rules should be made aware of them at their appointment.**

20. In the regulatory world, non-executive and lay board members are likely to hold a portfolio of positions which may lead to conflicts of interest between the activities of the regulator and those of regulated entities; these portfolios could compromise the independent judgement of non-executive and lay board members.

**Best Practice: Particular care should be taken where non-executive board members have a live, concurrent post which could give rise to conflicts of interest. Any conflict of interest for non-executives should be established at the start of the selection process and actively managed to ensure there are no material factors impeding independence of judgement.**

## Independence

21. The Committee recognises the immense challenges that regulators face in striking the balance between competing pressures from the government and regulated sector.
22. On the one hand, visible independence is vital to ensure that there is neither short-term political interference nor any sort of bias or favouritism towards or against particular players. This freedom of action is needed to reassure investors, competitors, consumers, and employees. A number of regulatory leaders told the Committee that the imperatives of independence are now less well-understood, and given less weight, than during the major privatisation exercises of the 1980s and 1990s.
23. On the other hand, the Committee recognises that there is a spectrum of independence. There cannot be total independence from government, especially where ministers make appointments, provide funding and have made clear their own priorities. Absolute independence can also lead to regulators operating in a vacuum, isolated from the opinions and actions of those they regulate or those they protect.
24. The government has a legitimate, democratic interest in the strategic direction of a regulatory body and in its efficiency and overall effectiveness. However, governments must not be involved in the operational decisions of regulators as this would influence and undermine their judgement and their authority. Clarity and transparency about the interaction between regulatory bodies and the government can go a long way to allay fears of misplaced interference.

**Best Practice: The operational independence of regulators must be upheld. Ministerial guidance on operational aspects may be transparently considered, but should not be treated as binding, unless there are statutory provisions for such guidance.**

**Best Practice: Any ministerial guidance to a regulatory body on its strategic direction should be published online by the regulator.**

25. Ministerial appointments may have a material impact on the strategic direction and independence of the regulatory body. It is essential therefore that appointments to regulatory bodies follow proper process.

**Recommendation: Ministerial appointments must be made, in a timely and transparent manner, on merit, without patronage and with proper regard to the needs of the organisation.**

**Recommendation: Unless expressly authorised in the statutory foundation of the regulator, ministers should not have the power to hire or fire the Chief Executive or any other operational staff.**

26. While some significant ministerial appointments are subject to pre-appointment scrutiny hearings with relevant select committees, others are not. The Committee views these hearings as an important mechanism to check the suitability of the preferred candidate and ensure that there has been propriety in the appointment process. However, there is lack of clarity over which positions or bodies are subject to scrutiny and which are not.

**Recommendation: Each government department should publish a list of the appointments that are subject to pre-appointment scrutiny hearings, and the justification for those decisions.**

27. Regulators should actively engage with the regulated sector or profession to build knowledge and expertise about their environment, activities, plans, concerns and to promote compliance. They also need to be alive to the risks of being improperly influenced by partial information or lobbying from the sector as a whole or from particular organisations or individuals.

**Best Practice: While constructively engaging with the regulated sector, regulators should guard against the dangers of 'regulatory capture'. Regulators should seek to ensure that staff at all levels are clearly aware of conflicts of interest and are explicitly advised about the risks of bias in decision making.**

28. Regulators may seek to diversify their income streams. However, some funding arrangements have the potential to compromise a regulator's independence by enabling undue influence from those who fund regulation and increase the risk of decisions being based on financial, rather than impartial judgement. Risk-based selection can help to ensure that regulators are not 'leant on' by ministers or other political influences, but remain neutral when selecting targets for regulation.

**Best Practice: Regulators should regularly publish full and accessible information on their sources of funding and, specifically, any restrictions proposed by those who provide their funding. Regulatory bodies should demonstrate that funding mechanisms do not have an impact on their independence and integrity.**

## Transparency

29. Regulators should exercise their judgement in balancing the demands of their role and protecting sensitive information whilst also seeking to be as transparent as possible by not withholding information from the public. This can be managed through publishing publicly-accessible transparency data on the functioning of the regulator, and ensuring that any pertinent information on regulated entities is published once it is no longer sensitive.

**Best Practice: Regulators should publish and update their corporate governance documents. These should include minutes of meetings, registers of interests, annual reports, their rules and guidance and their decision making processes.**

**Best Practice: Any body with regulatory functions not designated a 'public authority' under the Freedom of Information Act 2000, should have a publication scheme in line with the best practice established by the Information Commissioner's Office.**

## External Leadership

30. Although the focus of the Committee's review has been on standards of conduct within regulatory bodies, regulators are well placed to support a wider ethical environment. There has been much comment in recent years about the damage caused by poor ethical standards in some parts of the commercial world. The unique influence possessed by regulatory bodies gives rise to a leadership opportunity, and responsibility, to promote ethical standards, especially in terms of positive approaches to compliance. There is growing evidence that regulatory effectiveness is maximised by a collaborative approach that actively promotes compliance as enlightened self-interest rather than a reliance upon deterrence and punishment.

**Best Practice: Regulators should actively engage with those they regulate and take a leadership role by encouraging positive attitudes towards compliance.**

**Recommendation: Such promotion of an ethical approach to compliance would be supported by a suitable amendment to the Regulators' Code.**

## Conclusion

31. Overall, the Committee has been reassured by the level of awareness and consideration of ethical issues by the regulators we reviewed. We found that they generally do understand the importance of supporting and maintaining ethical standards and have succeeded in establishing acceptable standards in their organisations. However, practice varies, and we did come across examples of *ad hoc* or retrospective action to deal with issues as they emerged. Whilst welcoming good practice, we would warn against complacency.