

Arrangements for dealing with standards allegations under the Localism Act 2011

1. Context

These “Arrangements” set out how to 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

To make a complaint, please write to or email –

Mike Jones
Monitoring Officer
Director of Law and Governance
Sandwell Council House
Oldbury
B69 3DE
mike_jones1@sandwell.gov.uk

Or

Charmain Oliver
Deputy Monitoring Officer

Interim Service Manager - Legal
charmain_oliver@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 the event of there being a conflict of interest in relation to both the Monitoring Officer and Deputy Monitoring Officer, the Monitoring Officer will, in consultation with the Chief Executive, seek to appoint another Deputy Monitoring Officer, or alternatively, refer the matter to a Monitoring Officer from another Authority.

Complaints should be submitted using the Complaint Form for Allegation of Breach(es) of Code of Conduct for Members.

In order to ensure that all the information needed to be able to process a complaint is included, please complete and send 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.

The complainant should provide their name and a contact address or email address, so that the complaint can be acknowledged and they can be kept informed of its progress. If the complainant wants to keep their name and address confidential, they should indicate this in the space provided on the complaint form, in which case their name and address will not be disclosed to the member against whom the complaint is made without their 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?

Preliminary tests

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 10 working days of receipt of your complaint.

The complaint will be assessed by the Monitoring Officer, or in their absence the Deputy Monitoring Officer, in consultation with the Independent Person (see paragraph 12 – ‘Who is the independent person?’ for further information) against the Stage One Legal Threshold set out in paragraph 5.1 and, if applicable, the Stage Two Initial Assessment test set out in paragraph 5.2 below.

5.1 Stage One - Legal Threshold:

- (a) Was the person complained of a member of the Council at the time of the alleged conduct?
- (b) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (c) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct in force at the material time?
- (d) The complaint is about dissatisfaction with the Council's decisions, policies and priorities, etc.

If the complaint fails one or more of the Stage One Legal Threshold tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

In the event of any ambiguity as to whether the Stage One Legal Threshold is met or not, the Monitoring Officer authorises the matter to proceed to Stage Two – Initial Assessment.

5.2 Stage Two – Initial Assessment

If the complaint satisfies the Stage One Legal Threshold test, the Monitoring Officer will then apply the following Initial Assessment criteria test:

- (a) The complaint is a ‘repeat complaint’, unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous (unless paragraph 4 applies);
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or ‘tit-for-tat’;
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;

- (f) The alleged misconduct happened more than 6 months ago;
- (g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time and it is more appropriate for the matter to be discussed with the Group Leader and/or Chief Whip in accordance with paragraph 16;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Councillor.

If one or more of the Stage Two Initial Assessment test applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

If the 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.

If none of the criteria in the Stage Two Initial Assessment apply, the Monitoring Officer will go on to apply the Public Interest Test at 5.3.

5.3 Stage 3 – Public Interest Test

Public interest is regarded as “something which is of serious concern and benefit to the public”. It has also been held that the public interest does not mean what is of interest to the public, but what is in the interest of the public.

The Council is of the view that it should not use its resources to investigate matters which are trivial or which have little or no impact upon the public. It is important that the Council focuses on investigations where matters are serious and capable of undermining the relationship between councillors and the public they serve such as; corruption, bullying, damaging the Council's public image, bringing the Council into disrepute, or the misuse of power in public office.

When applying the public interest test, the Monitoring Officer and Independent Person shall consider each of the following public interest factors set out below. These factors are not exhaustive, and not all may be relevant in every case.

The weight to be attached to each of these factors, and the factors identified, will also vary according to the facts and merits of each case.

- the seriousness of the breach, for example, has the Member brought the Council seriously into disrepute? The more serious the breach the more likely investigation and referral for further hearing is required;

- has the Member deliberately sought personal gain for himself or another person at the public expense? If there is evidence of this, it is likely that the complaint will be investigated and referred for further hearing;

- are the circumstances of the breach such that a Member has misused a position of trust or authority and caused harm to a person? If there is evidence of this it is likely that the complaint will be investigated and referred for further hearing;
- was the breach motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity? If a member's conduct is motivated by any form of discrimination it is likely that the complaint will be investigated and referred for further hearing;
- is there evidence of previous similar behaviour on the part of the Member? If so and the matter complained about is serious enough it is likely that the complaint will be investigated and referred for further hearing;
- is the breach such that an investigation or referral to the Ethical Standards and Member Development Committee is required to maintain public confidence in elected Members? If so it is likely that the complaint will be investigated and referred for further hearing; and is investigation or referral to the Ethical Standards and Member Development Committee a proportionate response? namely, would the cost of an investigation or hearing by the Ethical Standards and Member Development Committee be regarded as excessive when weighed against any likely sanction?

6. What happens once the Monitoring Officer has reached a decision?

Where the Monitoring Officer has taken a decision, they will inform the complainant of their 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 the Monitoring Officer requires additional information in order to come to a decision, they may request further information from the complainant, and may request information from the member against whom the complaint is directed.

The member against whom the 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.

Local Resolution

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 their 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 the complainant does not agree with that offer, the Monitoring Officer will take account of those 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.

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.

7. Referral for Investigation

If the Monitoring Officer decides that a complaint merits formal investigation, they 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 they need to meet or speak to the complainant to understand the nature of the complaint and so the complainant can explain their 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 appended to these arrangements.

The Investigating Officer would normally write to the member against whom the complaint has been made and provide them with details of the complaint, within 5 working days of being appointed.

The Subject Member has the opportunity to provide an explanation of events, identify any documents they believe the Investigating Officer needs to see and who should be interviewed. This should be done within 5 working days of receiving the details of the complaint from the Investigating Officer.

In exceptional cases, where it is appropriate to keep the complainant's identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete the complainant's 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 the complaint. The interview may be tape recorded or recorded on Teams if the meeting takes place remotely, unless the Investigating Officer considers there to be good reason not to.

The disclosure of any evidence to the Subject Member at any stage of the investigation is a matter for the Investigating Officer, having regard to the rules of natural justice and ensuring fairness to all parties concerned.

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

The Investigating Officer will endeavour to complete their investigation within 8 weeks (40 working days). However, **may**, if they consider it to be in the interests of natural justice and fairness, extend the timetable based upon factors such as:

- Medical reasons relating to the subject member (with evidence specifically addressing why the subject member cannot engage in the investigation);
- To allow the subject member to seek legal advice and representation;
- In consideration of any personal or family circumstances of the subject member that impacts on their availability or ability to engage at the initial stage.
- Other exceptional circumstances determined on a case by case basis eg availability of a key or material witness.

Any extension will be determined by the Investigating Officer who will confirm the new timetable and notify the relevant parties.

The Investigating Officer reserves the right to proceed with the investigation in the absence of engagement of the subject member if they are satisfied that reasonable opportunity has been given to the subject member to engage in the process.

At the end of their 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, if satisfied with the report, will then send the draft report to the complainant and the subject member normally within 5 working days.

The evidence gathered during the course of the investigation is not disclosed to the complainant or the subject member at this stage.

The complainant and the subject member will be given a period of 10 working days to comment on the draft report. All comments should be directed to the Investigating Officer for consideration.

The Investigating Officer, having received and taken account of any comments made on the draft report and undertaking any further investigation they consider relevant and appropriate. The Investigating Officer will endeavour to send their final report to the Monitoring Officer, normally within 5 working days.

8. 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 they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the subject member, notifying them that they are satisfied that no further action is required, and give provide both with 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, they may ask the Investigating Officer to reconsider their report. The Monitoring Officer may consult the Independent Person about this.

9. 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 Ethical Standards and Member Development Committee or, after consulting the Independent Person, seek local resolution.

9.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with the complainant. If the complainant does not agree with the suggested resolution, the Monitoring Officer will take account of their 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 their 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 Ethical Standards and Member Development 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 Ethical Standards and Member Development 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.

9.2 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 Ethical Standards and Member Development 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 (30 working days) of the decision to proceed to a local hearing being made.

Within 5 working days of the decision being made to proceed with a local hearing, the Monitoring Officer shall provide the complainant and the subject member with a copy of the bundle containing the supporting evidence.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give their 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 Ethical Standards and Member Development 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 Ethical Standards and Member Development Committee rather than a sub-committee.

At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the member has failed to comply with the Member Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Sub Committee. The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Sub Committee as to why they consider that they 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.

10. What action can the Sub Committee of the Ethical Standards and Member Development Committee take where a member has failed to comply with the Member Code of Conduct?

The Council has delegated to the Ethical Standards and Member Development 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 Ethical Standards and Member Development 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 Ethical Standards and Member Development Committee may –

- 10.1 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that the subject member be removed from any or all Committees or Sub Committees of the Council;
- 10.2 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 10.3 Instruct the Monitoring Officer to arrange training for the member;
- 10.4 Recommend to Council to remove from all outside appointments to which the member has been appointed or nominated by the authority;
- 10.5 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
- 10.6 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.
- 10.7 Recommend to the Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion.
- 10.8 Instruct the Monitoring Officer to apply the informal resolution process.
- 10.9 Recommend the Council to issue a press release or other form of publicity.

- 10.10 Recommend that the subject member makes an apology at the next full Council meeting.
- 10.11 Take such steps as appropriate, reasonable and proportionate to the particular conduct that amounted to the breach of the code of conduct.

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

11. 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, and normally within 5 working days, 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 Ethical Standards and Member Development Committee, within the timescale set, the Monitoring Officer will report the matter to the Ethical Standards and Member Development 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.

12. Who are the Ethical Standards and Member Development Committee?

The Ethical Standards and Member Development 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](#).

The Independent Person(s) is/are invited to attend all meetings of the Ethical Standards and Member Development Committee and their views are sought and taken into consideration before a Sub Committee of the Ethical Standards and Member Development 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.

13. 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 –

- 13.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 13.2 Is a relative, or close friend, of a person within paragraph 13.1 above. For this purpose, “relative” means –
 - 13.2.1 Spouse or civil partner;
 - 13.2.2 Living with the other person as husband and wife or as if they were civil partners;
 - 13.2.3 Grandparent of the other person;
 - 13.2.4 A lineal descendent of a grandparent of the other person;
 - 13.2.5 A parent, sibling or child of a person within paragraphs 13.2.1 or 13.2.2;
 - 13.2.6 A spouse or civil partner of a person within paragraphs 13.2.3, 13.2.4 or 13.2.5; or
 - 13.2.7 Living with a person within paragraphs 13.2.3, 13.2.4 or 13.2.5 as husband and wife or as if they were civil partners.

14. 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 Ethical Standards and Member Development 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.

15. 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.

15.1 Subject Access Requests

The Data Protection Act 2018 and UK GDPR 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 Council's Governance Team and if necessary, the Data Protection Officer.

15.2 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.

16. Review Meetings

There will be quarterly meetings between the Chief Executive , Monitoring Officer, group leader(s) and group whips, to consider themes across any standards complaints/investigations for the purpose of identifying training needs and member development opportunities (or any other improvements) in order to prevent recurrence of incidents.

17. Revision of these arrangements

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

There shall be a desktop review of the Code of Conduct and these Arrangements undertaken by the Committee with the Monitoring Officer annually, and an in depth review undertaken every 2 years.

18. Appeals

There is no right of appeal against a decision of a Sub Committee of the Ethical Standards and Member Development Committee.

If the complainant or subject member feels that the authority has failed to deal with the complaint properly, they may seek independent legal advice.

Glossary of Key Terms

Complainant(s)	The person/people making the complaint.
Preliminary tests and assessment stages.	The process undertaken by the Monitoring Officer to determine if a complaint merits formal investigation. There are three assessment stages; legal threshold, initial assessment and public interest.
Local Hearing	A meeting of a sub-committee of the Ethical Standards and Member Development Committee at which they consider whether the “Subject Member” has breached the code of conduct.
Independent person	The Council must appoint at least one Independent Person and seek that person’s views before it takes decision on a complaint that it has decided to investigate. The Independent Person’s views can also be sought by the council on any other issue in the complaints handling process. The Independent Person will also provide, on request, procedural advice to a Subject Member.
Investigator	The person appointed by the Monitoring Officer to undertake a formal investigation. This may involve the appointment of an investigating officer, who may be another officer of the council, an officer of another council or an external investigator.
Legal advisor	The officer responsible for providing legal advice to the Sub-committee of the Ethical Standards and Member Development Committee conducting the Local Hearing. This may be the Monitoring Officer, another legally qualified officer, or someone appointed for this purpose from outside the council.
Monitoring Officer	The Monitoring Officer is a senior officer of the council who has statutory responsibility for maintaining the register of councillors’ interests and who is responsible for administering the system in respect of complaints of councillor misconduct.
Public Interest	Public interest considerations are part of the assessment of the complaint.
Subject Member	The councillor against whom an allegation has been made.

UK GDPR	The UK General Data Protection Regulation (Regulation (EU) 2016/679)
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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

- 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.**

Title:	
First name:	
Last name:	
Address:	
Contact telephone:	
Email address:	
Signature:	
Date of complaint:	

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:

- The Monitoring Officer of the authority and appropriate officers supporting the Monitoring Officer.
- The Independent Person
- Standards Panel and parties to any Hearing

A summary of your complaint will be shared with the subject member and their representative.

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.

Reference to member also includes a co-opted member of the Council.

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 Ethical Standards and Member Development 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 Monitoring Officer or Deputy Monitoring Officer when they decide 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.

Complete on separate sheet(s), as necessary



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

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 Monitoring Officer/Deputy 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)

8. 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

9. Complaints must be submitted in writing. This includes electronic submissions. Please use this Form to submit your complaint.
10. In line with the requirements of the Equality Act 2010, 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.
11. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.
12. 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 considered in accordance with these Arrangements. You will be notified of the decision and any further stages in the process.

Please return your completed form to:

Mike Jones
Monitoring Officer
Sandwell Council
Sandwell Council House
Oldbury
B69 3DE

mike_jones1@sandwell.gov.uk

**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 10 working 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 the:

- 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, behaviour 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 may be tape recorded or recorded on MS Teams if the interview takes place remotely, 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 fortnightly 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, they 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 their 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, if satisfied with the report, will then send the draft report to the complainant and the subject member within 5 working days. 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 10 working 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 their 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]

Stage One - Legal Threshold

The Monitoring Officer shall determine whether any of the Stage One – Legal Threshold criteria test are met as set out in paragraph 5.1 of the Arrangements.

Stage Two Initial Assessment

The Monitoring Officer shall determine whether any of the Stage Two – Initial Assessment criteria test are met as set out in paragraph 5.2 of the Arrangements.

Public Interest Test

The Monitoring Officer shall apply the Public Interest Test in accordance with paragraph 5.3 of the Arrangements.

Decision

Having consulted and considered the views of the Independent Person, the Monitoring Officer decided to [refer the complaint for investigation] [offer a local resolution] [take no further action].

At this stage, the Monitoring Officer is not required to decide if the Members 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.

If referring 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]

If referring for Local Resolution:

The terms of the local resolution are as follows [insert terms that subject member must comply with]

Compliance with these terms is required within [insert weeks] of this decision notice.

If the subject member fails to comply with the local resolution, the matter will be referred to a sub-committee of the Ethical Standards and Member Development Committee for hearing.

If No further action

The Monitoring Officer has decided that no further action will be taken in relation to this complaint and therefore the matter is concluded.

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

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

APPENDIX 2

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

Case No:

Date received by monitoring officer:	
Date referred to investigator:	

Subject member:		Complainant:	
Authority:		Investigator:	

Target for monitoring officer’s receipt of draft report

Date due:	
Explanation:	

Target for issue of draft report

Date due:	
Explanation:	

Target for issue of final report

Date due:	
Explanation:	

Case analysis

Behaviour alleged	
Relevant Code paragraphs	
Issues for determination	
Evidence required	
Evidence obtained	

Possible witnesses

Name of Witness	
Issue they may address	
Date of interview	

Possible witnesses

Name of Witness	
Issue they may address	
Date of interview	

Possible witnesses

Name of Witness	
Issue they may address	
Date of interview	

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:

APPENDIX 3

Statement of

Interview Date:		Place of Interview:	
People Present:			

This statement consisting of ... page is true to the best of my knowledge and belief.

I understand that I may be required to give evidence should a hearing be held. I also understand that this statement may be used in all procedures related to this matter and other connected matters. I am aware that a copy of this statement may be disclosed to others as part of these and related proceedings.

I am the above named person and understand that I have been asked to provide this statement in relation to allegations made against

I have been asked about the allegation that

Signed.....

Dated

APPENDIX 4

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

Case No:

Interviewee:	
---------------------	--

Subject member:		Interviewer:	
Authority:		Date:	

Nature of complaint

Purpose of interview

Facts already established (which relate to purpose of interview)**Facts to be established** (which relate to purpose of interview)**Record of disclosure to witness before interview****Planned disclosure to witness during interview**

Areas to be covered in interview	Key questions

APPENDIX 5



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

Case No:

Date:	
Investigator:	

Subject member:		Complainant:	
------------------------	--	---------------------	--

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

Revised draft report target:	
Revised date of final report target:	

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

APPENDIX 7
**Comments Assessment Matrix For Dealing with Standards Allegations
 Under the Localism Act 2011**
Case No:

Date:			
Investigator:			
Subject member:			Complainant:
Comments Made by:			
Date Received:			

Comment Received	Response	Amendment Necessary?
