

ITEM NO: 5

5REPORT TO:	STANDARDS COMMITTEE
DATE:	11 September 2012
REPORT OF:	Borough Solicitor (Monitoring Officer)
SUBJECT MATTER:	LOCALISM ACT 2011 – NEW CODE OF CONDUCT FOR MEMBERS AND ARRANGEMENTS TO DEAL WITH COMPLAINTS
REPORT SUMMARY:	To enable the Standards Committee to consider a draft Code of Conduct for Members and draft Arrangements for investigating and deciding upon complaints against Members, pursuant to the provisions of the Localism Act 2011
RECOMMENDATION(S)	<p>That it is recommended that the Council:</p> <ol style="list-style-type: none">1. adopts with or without modifications the Draft Code of Conduct for Members as set out at Appendix 1;2. adopts with or without modifications the Draft Arrangements for dealing with complaints about Members under the Code of Conduct for Members as set out at Appendix 2;3. should establish a Standards Committee, composed of at least 5 elected Members of Tameside Council (politically balanced) or substitutes, 1 elected Member of Mossley Town Parish Council and 3 Independent Persons, and that the Council should delegate to Standards Committee the powers set out at Appendix 3;4. should delegate to the Council's Monitoring Officer the powers set out at Appendix 4;5. should request the Council's Monitoring Officer to make amendments to the Council's Constitution in order to give effect to the requirements of the Council's Draft Code of Conduct for Members in relation to the notification and disclosure of interests and withdrawal from a Council meeting where a Member has either a Disclosable Pecuniary Interest or a Prejudicial Interest.6. That formal thanks is extended to the Reverend Dennis Thomas for his service and contribution to the Standards Committee during his 10 year tenure of the Standards Committee.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	These are set out in the Report.

RISK MANAGEMENT: To comply with legal requirements set out in the Localism Act 2011.

LINKS TO COMMUNITY PLAN: Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

Background Documents:

- a) Previous reports to the Standards Committee
- b) Chapter 7, Sections 26 to 37 and Schedule 4 of the Localism Act 2011.
- c) The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012 No. 1463).
- d) The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012 No. 1464).

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:

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1. BACKGROUND AND CONTEXT

- 1.1 This report summarises the changes made by the Localism Act and contains the Borough Solicitor's recommendations to Standards Committee in relation to the actions required for the Council to implement the new standards regime.
- 1.2 On the 6 June 2012 the Government made a Commencement Order that brought into force new arrangements for standards under the Localism Act as from on the 1 July 2012. Under the Localism Act, the function of "adopting, revising or replacing a code of conduct" can only be discharged by the Council and may not be delegated. In order to ensure that the Council complies with its obligations under the Localism Act in relation to the new standards regime as soon as possible, this report contains the Borough Solicitor's proposals in relation to the following issues:
- A draft Code of Conduct for Members (the "New Code"), which is attached at Appendix 1;
 - Draft local Arrangements for dealing with Complaints about Members ("the Arrangements"), which are attached at **Appendix 2**;
 - Future arrangements in relation to the Council's Standards Committee, which are discussed at paragraph 6 of this report;
 - Draft delegations to the Council's Standards Committee, which are attached at **Appendix 3**;
 - Draft delegations to the Council's Monitoring Officer, which are attached at **Appendix 4**;
 - The need for consequential amendments to be made to the Council Procedure Rules (Part 4, Section A of the Council's 2012 Constitution), in order to give effect to the requirements of the Council's Draft Code of Conduct for Members in relation to disclosure and withdrawal from a Council meeting where a Member has either a Disclosable Pecuniary Interest or a Prejudicial Interest referred to at paragraph 8 of this report.
- 1.3 The Council's Standards Committee is requested to review the attached proposals, and comment upon them, with a view to the Council adopting at its meeting on the XXX 2012.

2. THE REQUIREMENTS OF THE LOCALISM ACT 2011

- 2.1 Under the Localism Act, the Council retains a statutory duty to "promote and maintain high standards of conduct" for its members and co-opted members. However, from the 1 July 2012, the current ten General Principles and Code of Conduct ("the Current Code") will be repealed, and Members will no longer have to give an undertaking to comply with the Council's Code of Conduct. Instead, the Localism Act provides that the Council must adopt a new Code of Conduct for Members ("the New Code") that is consistent with the seven "Nolan principles" of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. The only other express requirement of the Localism Act in relation to the Council's New Code is that: the New Code includes the provision that the Council considers appropriate in respect of the registration in the Council's Register of Members' interests, and disclosure, of:
- ✓ pecuniary interests, and
 - ✓ interests other than pecuniary interests.
- 2.2 Attached at **Appendix 1** is a draft New Code, Part 1 of which has been produced as a result of collaboration with colleagues in other AGMA authorities with a view to developing an agreed "AGMA Code" that all the AGMA authorities will adopt as their New Code and which the and the GMCA has already adopted at its meeting of the 27 July 2012.
- 2.3 Under the Localism Act the Council is also required to have in place local "Arrangements" for handling allegations that a member or co-opted member of the Council has failed to

comply with the Council's New Code and also that a member or co-opted member of Mossley Town Parish Council has failed to comply with its Code. While the Localism Act effectively allows the Council a wide freedom as to the form of its arrangements, in order to comply with the common law rules of natural justice and fairness it is necessary for the Council's Arrangements to set out in some detail the process for dealing with complaints and the actions which may be taken against a Member who is found to have acted in breach of the Council's New Code. Attached at **Appendix 2** are draft Arrangements for dealing with complaints about Members under the Council's New Code. These again have been produced as a result of collaboration with other AGMA authorities.

3. PROPOSALS IN RELATION TO THE COUNCIL'S CODE OF CONDUCT FOR MEMBERS – THE DRAFT “AGMA” CODE OF CONDUCT FOR MEMBERS

3.1 The general consensus across the AGMA authorities was that the Current Code was reasonably well understood and that there was therefore little purpose in making major alterations to it. A summary of the principal differences between the Current Code and the draft New Code is set out at paragraphs 3.2 to 3.5 below.

3.2 **Part 1 of the New Code** The principal change between the Current Code and the draft New Code is that there are no references in the New Code to member conduct in private life, since the Localism Act is only concerned with conduct when Members are acting in their official capacity as a Member or Co-opted Member of the Council or as an appointed Member of a joint committee. The draft New Code also changes the provisions of the Current Code in relation to allegations of a Member's “*failure to show respect to others*”, which is a breach of the Current Code. Concern has been expressed that this was too subjective and has led to many trivial complaints. It is proposed instead that the draft New Code should prohibit “bullying and being abusive to others”.

3.3 Part 2 of the New Code

3.3.1 **“Disclosable Pecuniary Interests” (“DPIs”)** - On the 6 June 2012 the Government made the long-awaited Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (“the DPI Regulations”), which specify what constitutes a DPI for the purposes of the Localism Act. Under the Localism Act, DPIs are broadly similar to what are referred to as “Prejudicial Interests” in the Current Code. A principal difference between DPIs and Prejudicial Interests however, is that if a Member fails to take appropriate action in relation to a DPI, then Section 34 of the Localism Act provides that such failure may constitute a criminal offence, which on conviction may lead to a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years. Previously, the maximum sanction was suspension for 6 months and commensurate loss of allowance.

3.3.2 **Definition of DPIs** Section 30(3) of the Localism Act defines DPIs as being an interest of a description specified by the DPI Regulations which is either:

(a) an interest of a Council member (“the Member”), or

(b) an interest of:

(i) the Member's spouse or civil partner,

(ii) a person with whom the Member is living as husband and wife, or

(iii) a person with whom the Member is living as if they were civil partners, where the Member is aware that the other person has the interest.

3.3.3 The draft New Code contains a table that describes those interests of Members and their partners which constitute DPIs (e.g. “any employment, office, trade, profession or vocation carried on for profit or gain”). The New Code advises Members of their statutory obligation under the Localism Act to notify the Council's Monitoring Officer of any DPIs within 28 days of becoming a Member. The New Code also advises Members of their statutory obligation under the Localism Act in relation to non-participation where a Member is present at a

meeting where they have a DPI in any matter that is being considered and that a failure to comply with the requirements of the New Code in relation to DPIs may constitute a criminal offence.

3.4 **Part 3 of the New Code**

3.4.1 **Personal Interests other than DPIs** - The Localism Act provides that the Council's draft New Code must include such provisions as the Council "considers appropriate" in respect of the registration in the Council's Register of Member's Interests of:

(a) pecuniary interests, and

(b) interests other than pecuniary interests. The Localism Act also provides that, subject to the specific provisions of the Localism Act in relation to the requirement for the Register of Member's Interests to record DPIs, it is for the Council to determine what is to be entered in its Register of Member's Interests.

3.4.2 **Notification of Personal Interests** The draft New Code requires Members (in addition to notifying the Monitoring Officer of any DPIs in accordance with the requirements of the Localism Act and the New Code), to notify the Monitoring Officer of any "Personal Interests" as defined at Part 3 of the New Code. The "Personal Interests" that are listed at Part 3, paragraph 11.2 of the New Code are effectively those "Personal Interests" in the Current Code that are not DPIs. However, it should be noted that the draft New Code only requires a Member to register in the Register of Member's Interests if he/she is in "a position of general control or management" of anybody:

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

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

3.4.3 While the Current Code requires Members to register the mere fact of their membership of any of the above bodies, it was felt on review that simply being a member of a charity etc. (as opposed to holding a position of general control or management in such a body) did not really require registration in the Register of Member's Interests and publication on the Council's website – particularly since membership of a company only needs to be registered where a person holds shares with a nominal value of at least £25,000. The other change requires that a Member only has to register receipt of gifts and hospitality with an estimated value of £100, as it was felt on review that the previous figure of £25 under the Current Code is too low.

3.4.4 **Disclosure of Personal Interests** The draft New Code provides that where a Member has a Personal Interest (as defined by Part 3, paragraph 11.2 of the New Code or Part 3, paragraph 12.2 of the New Code) in any Council business, and s/he attends a Council meeting at which the business is considered, the Member concerned must disclose to that meeting the existence and nature of his/her Personal Interest as soon as the Personal Interest becomes apparent. As in the Current Code a Member must disclose a "Personal Interest" in any Council business where:-

"a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision"

3.4.5 The definition of "relevant person" is wider than "partner" and includes the Member's wider family and close friends whose interests are not DPIs. Therefore, where a Member of the Council's Planning Committee becomes aware that a decision in relation to a planning application involves a "relevant person" (such as a child or close friend of the Member), the draft New Code will require the Member to disclose this as a "Personal Interest" to the meeting, even though it does not constitute a DPI that must be disclosed under the

Localism Act.

- 3.4.6 **Non-participation in the case of Prejudicial Interests** As in the Current Code, where a Member has a “Personal Interest” in any Council business, then the Member will also have a “Prejudicial Interest” in that business where:-

the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:-

- (a) *affects your financial position or the financial position of a relevant person; or*
- (b) *relates to the determining of any approval, consent, licence, permission or registration in relation to you or any relevant person.”*

- 3.4.7 Where a Member has a Prejudicial Interest, then the draft New Code provides that (subject to a number of specific exceptions), the Member must:

- (a) Not participate in any discussion of the matter at the meeting;
- (b) Not participate in any vote taken on the matter at the meeting;
- (c) Disclose the Prejudicial Interest to the meeting (if it is not registered in the Register of Member’s Interests); and
- (d) Notify the Council’s Monitoring Officer of the Prejudicial Interest within 28 days (if it not if it is not registered in the Register of Member’s Interests and is not the subject of a pending notification).

3.5 **Part 4 of the New Code – Register of Interests and Dispensations**

- 3.5.1 **Council’s Register of Member’s Interests** - The draft New Code provides that any DPIs or Personal Interests notified to the Monitoring Officer will be included in the Register of Member’s Interests and that, in accordance with the requirements of the Localism Act a copy of the Register will be available for public inspection and will be published on the Council’s website.

- 3.5.2 **Dispensations** The provisions in relation to the grant of dispensations are significantly changed under the Localism Act. Under the current standards regime, dispensations to allow a Member who has a “Prejudicial Interest” to participate in and/or vote on a matter in which they have a Prejudicial Interest can only be granted by the Standards Committee on one of the following two grounds:-

- That at least half the members of a decision-making body have Prejudicial Interests; and
- That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.

- 3.5.3 By contrast, under the Localism Act, the Council is given the discretion to delegate the power to grant dispensations to the Standards Committee, a Sub-Committee, or to the Council’s Monitoring Officer, and dispensations to allow a Member who has a DPI to participate in and/or vote on a matter in which they have a DPI may be granted on one of the following five grounds under Section 33(2) of the Act:

- (a) That so many members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”;
- (b) That without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of the vote in any matter;
- (c) That granting the dispensation is in the interests of people living in the Council’s area;
- (d) That, without a dispensation, no member of the Executive would be able to participate in the matter; or

(e) That it is otherwise appropriate to grant the dispensation.

3.5.4 Since the grounds for dispensation under (a), (b) and (d) of the Localism Act are relatively “objective”, it is proposed to delegate power to grant dispensation on these grounds to the Borough Solicitor, with an appeal to the Council’s Standards Committee, and suggested delegations are contained at **Appendix 4**. As the grounds for dispensation under (c) and (e) of the Localism Act are rather more “subjective”, it is proposed to delegate power to grant dispensation on these grounds to the Standards Committee, in consultation with the Independent Person, and suggested delegations are contained at **Appendix 3**.

4. PROPOSALS IN RELATION TO THE COUNCIL’S ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT MEMBERS UNDER THE COUNCIL’S CODE OF CONDUCT FOR MEMBERS

4.1 Attached at **Appendix 2** are the Borough Solicitor’s draft proposals for the Council’s Arrangements for Dealing with Complaints about Members under the Council’s New Code (“the Arrangements”). As the Localism Act repeals the requirements of the previous standards regime for separate Assessment, Review and Hearings Sub-Committees, the Council is able to establish its own process, which can include the delegation of decisions on complaints against Council members.

4.2 **Retention of Council Standards Committee from 1 July 2012** - From the 1 July 2012 the Council no longer has a statutory duty to appoint a Standards Committee. However, there has been a general consensus across local authorities in favour of the retention of a Standards Committee composed of both elected Council Members and co-opted Independent Members (although, following the repeal of the previous standards regime any co-opted Independent Members of the Council’s Standards Committee appointed after the 1 July 2012 will not have voting rights). Further detail as to the Borough Solicitor’s proposals in relation to the future composition of the Council’s “voluntary” Standards Committee, its proposed remit and specific delegations, are set out at paragraph 6 and **Appendix 3** of this report. Insofar as the draft Arrangements are concerned, the general approach taken by the Borough Solicitor is that the Council’s Arrangements for dealing with complaints against Members should be as proportionate and cost effective as possible. Emphasis is placed in the draft Arrangements on securing resolution of any complaint against a Member without the need for the matter to be referred to a formal hearing.

4.3 **Decision whether to investigate a complaint that a Member has breached the New Code** - The draft Arrangements delegate to the Council’s Monitoring Officer the initial assessment, in consultation with the Council’s Independent Person, of any complaint that a Member has breached the draft New Code. The draft Arrangements provide that, where the Monitoring Officer receives a complaint against a Member, the usual procedure will be for the Monitoring Officer to write to the Member who is the subject of the complaint (“the Subject Member”) and provide them with details of the allegations that have been made, and for the Subject Member to be given the opportunity to make written representations to the Monitoring Officer regarding the complaint.

4.3.1 The draft Arrangements provide for the Monitoring Officer to carry out an initial “filter” of any complaints against a Council member and in consultation with the Independent Person, to determine whether the complaint should be rejected, investigated or resolved informally. The Monitoring Officer will retain the ability to refer the matter to the Standards Committee at assessment stage, but only in exceptional circumstances.

4.3.2 Where the Monitoring Officer decides that a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer. The Investigating Officer will carry out their investigation in accordance with guidance which will be issued by the Monitoring Officer, and which will follow the principles of proportionality and the cost effective use of

Council resources. At the end of their investigation the Investigating Officer will produce a report for the Monitoring Officer.

- 4.4 **“No Breach of New Code” finding after investigation** - Under the current standards regime, where an Investigating Officer found no evidence of failure to comply with the Current Code, this had to be reported to the Standards (Referrals) Sub-Committee, and the Sub-Committee would take the decision to take no further action. The draft Arrangements now provide that where an Investigating Officer’s report finds that the Subject Member has not failed to comply with the draft New Code, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer’s report, and, if satisfied, the Monitoring Officer will confirm the Investigating Officer’s finding.
- 4.5 **“Breach of New Code” finding after investigation** -The draft Arrangements provide that where an Investigating Officer’s report finds that the Subject Member has failed to comply with the draft New Code, the Monitoring Officer will review the report, and then, in consultation with the Independent Person, will decide either to send the matter for local hearing before the Standards (Hearing) Sub-Committee, or to seek a local resolution of the matter (e.g. by way of an apology by the Subject Member or the arrangement of training).
- 4.5.1 Where, in the opinion of the Monitoring Officer, local resolution is not appropriate (or where the complainant and/or the Subject Member refuse to accept local resolution), the Monitoring Officer will report the Investigating Officer’s findings to the Standards (Hearing) Sub-Committee, which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the New Code and, if so, what action (if any) to take in respect of the Subject Member.
- 4.6 **Action in response to a finding of the Standards (Hearing) Sub-Committee of failure to comply with the New Code** - The Localism Act does not give the Council, a Council Standards Committee or the Council’s Monitoring Officer any specific powers to impose sanctions (such as suspension, or requirements for training or an apology) on Members who fail to comply with the Council’s draft New Code. As a result, the range of actions that the Council can take in respect of a Member who has been found to have failed to comply with the New Code is very limited. However, insofar as the Council does retain limited powers to take action against a Council member who has breached the New Code, the draft Arrangements provide that these should be delegated to the Council’s Standards Committee (and sub-delegated by the Standards Committee to the Standards (Hearing) Sub-Committee).
- 4.6.1 Therefore where a hearing of the Standards (Hearing) Sub-Committee has found that a Member has breached the New Code, the Sub-Committee may take such of the following actions as it may consider necessary to promote and maintain high standards of Member conduct:
- a. To publish its findings in respect of the Subject Member’s conduct;
 - b. To report its findings to Council (or in the case of a complaint against a member of Mossley Town Parish Council to the Parish Council), for information;
 - c. To recommend the Council (or in the case of a complaint against a member of Mossley Town Parish Council to the Parish Council), that the Subject Member should be censured;
 - d. To recommend to the Subject Member’s group leader (or in the case of ungrouped members to Council) that the Subject Member should be removed from any or all committees or sub-committees of the Council;
 - e. To recommend to the Leader of the Council that the Subject Member should be removed from the Executive, or removed from their portfolio responsibilities.
 - f. To instruct the Monitoring Officer to (or in the case of a complaint against a member of Mossley Town Parish Council, may recommend that the Parish Council should) arrange training for the Subject Member;

- g. To recommend to Council (or in the case of a complaint against a member of Mossley Town Parish Council, may recommend to the Parish Council) that the Subject Member should be removed from all appointments to which the Subject Member has been appointed or nominated by the Council (or by the Parish Council).
- h. To withdraw (or in the case of a complaint against a member of Mossley Town Parish Council, may recommend to the Parish Council that it withdraws) facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and Internet access; or
- i. To place such restrictions (or in the case of a complaint against a member of Mossley Town Parish Council, may recommend to the Parish Council that it places such restrictions) on the Subject Member's access to Council staff, buildings or parts or buildings as may be reasonable in the circumstances.

4.7 **Appeal** - The Localism Act does not require the Council's Arrangements to include any appeals mechanism giving either a complainant and/or a Subject Member a right of appeal against a decision that they are not happy with. The Council's draft Arrangements therefore provide that (subject to judicial review or a decision of a local ombudsman), there is no right of appeal by either a complainant or the Subject Member against a decision of the Monitoring Officer or of the Standards (Hearing) Sub-Committee.

4.8 **Delegations** - Since the Localism Act does not give either the Council's "voluntary" Standards Committee or the Council's Monitoring Officer special powers to deal with complaints against Council members, it is necessary for Council to delegate appropriate powers in order to allow the Monitoring Officer and the Standards (Hearing) Sub-Committee to give effect to the Council's draft Arrangements. The necessary delegations to the Council's Standards Committee are included within the proposed delegations to the Council's Standards Committee attached at **Appendix 3** and those to the Council's Monitoring Officer are included within the proposed delegations to the Council's Monitoring Officer attached at **Appendix 4**.

5. PROPOSALS IN RELATION TO THE APPOINTMENT OF INDEPENDENT PERSONS

5.1 Sections 28(7) to (10) of the Localism Act require the Council to appoint at least one "Independent Person" – essentially not a current Officer, Member or Co-opted Member of the Council, or a person who has been an Officer, Member or Co-opted Member of the Council within the past 5 years, or a relative or close friend of either of the aforementioned categories. The Localism Act provides that the views of an Independent Person **must** "be sought, and taken into account" by the Council "before it makes a decision on an allegation that it has decided to investigate". In addition the Localism Act provides that the views of an Independent Person **may** be sought by:-

- The Council when deciding how to deal with a new allegation; and
- A Member or Co-opted Member of the Council whose behaviour is the subject of an allegation made to the Council.

5.2 While the Localism Act requires the Council to appoint "at least one" Independent Person, the number of roles that the Independent Person may undertake creates the potential for conflict issues. The Borough Solicitor therefore advises that Standards Committee should recommend that the Council should appoint at least two Independent Persons.

6.3 The Localism Act sets out the procedure that the Council must follow in appointing an Independent Person, and provides that the appointment of an Independent Person has to be approved by a majority of Council Members. As a result of concerns raised by a number of local authorities as to the potential difficulty in finding suitable candidates to act as Independent Persons, the Government has made "transitional arrangements" which provide that a person may be appointed to act as an Independent Person where they have been a

member or co-opted member of the Council's Standards Committee at any time during the 5 years ending on the 30 June 2012, so long as they are not a member or co-opted member of the Council's Standards Committee on the 1 July 2012.

- 5.4 On the 17 July 2012 the Council appointed 3 Independent Persons who had previously had extensive experience on the Standards Committee. It was not possible to appoint the Reverend Dennis owing to his lengthy service to the committee.

7. PROPOSALS IN RELATION TO THE COUNCIL'S STANDARDS COMMITTEE

- 6.1 **Membership** - From the 1 July 2012, if the Council does decide to retain a Standards Committee, then the membership of the Council's Standards Committee is a matter for local choice, and there is no longer any statutory requirement for the Council's Standards Committee to include Independent Co-Opted Members with voting rights. If the Council does decide to retain a Standards Committee, then only elected members of Tameside Borough Council will have voting rights.

- 6.2 It is proposed that the Council should retain a Standards Committee. As the political parties on Tameside Borough Council have formed into groups, the political proportionality rules will apply, unless the Council resolves to waive them for the Council's Standards Committee (with no Member voting against).

- 6.3 It is proposed that from the 1 July 2012 the Council's Standards Committee should be comprised of at least 4 elected Members of Tameside Borough Council or substitutes and should be politically balanced. On the basis of the political proportionality rules, this would mean that there would be 7 Labour Members and 1 Conservative Members. It is also proposed that one member of Mossley Town Parish Council (with one substitute) and three Independent Persons with one acting as the Chair. should be co-opted onto the Council's Standards Committee without voting rights.

- 6.4 **Constitution of a Hearing Panel** - Where it is necessary for a Hearing Panel to be convened, the Hearing Panel will be a Sub-Committee of the Council's Standards Committee. It is proposed that a Hearing Panel will comprise at least one Independent Person and three Members of the Standards Committee, and that one of the Members should be a Member of the minority party. Where a complaint is about a Member of Mossley Town Parish Council, it is proposed that the Hearing Panel will include the Mossley Town Parish Council Member co-opted to the Council's Standards Committee.

- 6.5 **Delegations to the Council's Standards Committee** - The Borough Solicitor proposes that Tameside Borough Council should delegate to the Council's Standards Committee the functions set out at **Appendix 3** to this report.

- 6.7 **Delegations to the Monitoring Officer** The Borough Solicitor proposes that Tameside Borough Council should delegate to the Council's Monitoring Officer the functions set out at **Appendix 4** to this report.

7. STANDING ORDERS

- 7.1 In order to give effect to the Council's draft New Code of Conduct for Members in relation to disclosure and withdrawal from a Council meeting where a Council member has either a Disclosable Personal Interest or a Prejudicial Interest, the Borough Solicitor proposes that Tameside Borough Council should request the Council's Monitoring Officer to make the necessary amendments to the Council's Constitution.

APPENDIX 1

THE PROPOSED CODE OF CONDUCT

PRE-AMBLE TO CODE OF CONDUCT FOR MEMBERS

1. INTRODUCTION

- 1.1 The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011.

2. GENERAL PRINCIPLES OF CONDUCT FOR MEMBERS AND CO-OPTED MEMBERS

- 2.1 The Code and the Guidance are based on the following General Principles.

2.1.1 General Principles

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.

2.1.2 Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

2.1.3 Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

2.1.4 Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

2.1.5 Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

2.1.6 Openness

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

2.1.7 Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

2.1.8 Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

2.1.9 Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.1.10 Stewardship

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.1.11 Leadership

Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

3. TRAINING

- 3.1 Each Member must attend training on the Code of Conduct/ethical standards, in addition to any current requirements to receive training for specific Committees, for example Development Control or Licensing Committees.

THE CODE OF CONDUCT

PART 1 GENERAL PROVISIONS

1. INTRODUCTION AND INTERPRETATION

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years. In this Code -“meeting” means any meeting of:
- (a) the Council;
 - (b) any of the Council’s committees or sub-committees, joint committees or joint sub-committees;
 - (c) the Executive or any committee of the Executive.

“Member” includes a co-opted member and an appointed member.

2. SCOPE

- 2.1 Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council:-
- (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal Authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. GENERAL OBLIGATIONS

3.1 You must not:-

- (a) do anything which may knowingly cause the Council to breach the Equality Act 2010;
- (b) bully or be abusive to any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

4. You must not:-

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - o reasonable and in the public interest; and
 - o made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

6. You:

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with the Council's reasonable requirements; and
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Public Borough made under the Local Government Act 1986.

7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by

- (a) The Council's chief finance officer; or
- (b) The Council's monitoring officer,

where that officer is acting pursuant to his or her personal statutory duties.

- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

PART 2 -DISCLOSABLE PECUNIARY INTERESTS

8. NOTIFICATION OF DISCLOSABLE PECUNIARY INTERESTS

8.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

[Note: Standing order X requires existing members and co-opted members of the Council to notify the Monitoring Officer of disclosable pecuniary interests within 28 days of the adoption of the Code]

8.2 A 'disclosable pecuniary interest' is an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.

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

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).
Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council – (a) under which goods or services are to be provided or works are to be executed: and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of Tameside Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Tameside Borough Council for a month or longer.
Corporate Tenancies	Any tenancy where (to your knowledge) – (a) the landlord is the Council: and (b) the tenant is a body in which you or your partner has a beneficial interest.
Securities	Any beneficial interest in securities of a body where (a) that body (to your knowledge) has a place of business or land in the area of Tameside Borough Council; and (b) either – (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

8.4 For the purposes of the above

(a) "a body in which you or your partner has a beneficial interest" means a firm in

which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.

- (b) "director" includes a member of the committee of management of an industrial and provident society.
- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

9. NON PARTICIPATION IN CASE OF DISCLOSABLE PECUNIARY INTEREST

- 9.1 If you are present at a meeting [of the authority, or any committee, subcommittee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,
- (i) You must not participate in any discussion of the matter at the meeting.
 - (ii) You must not participate in any vote taken on the matter at the meeting.
 - (iii) If the interest is not registered, you must disclose the interest to the meeting.
 - (iv) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

[Note: In addition, Standing Order X requires you to leave the room where the meeting is held while any discussion or voting takes place, and in the case of a registered (as well as unregistered interest) to disclose it to the meeting].

- 9.2 Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

10. OFFENCES

- 10.1 It is a criminal offence to
- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
 - Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
 - Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
 - Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
 - As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
 - As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
 - Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting
- 10.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

PART 3 -OTHER INTERESTS

11. NOTIFICATION OF PERSONAL INTERESTS

- 11.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of:
- (a) this Code being adopted by or applied to your authority; or
 - (b) your election or appointment to office (where that is later),
- notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 11(2) below for inclusion in the register of interests.
- 11.2 You have a personal interest in any business of your authority where it relates to or is likely to affect
- (a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;
 - (b) any body
 - (i) exercising functions of a public nature;
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are in a position of general control or management;
 - (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least [£100]

12 DISCLOSURE OF INTERESTS

- 12.1 Subject to paragraphs 12.4 to 12.7, where you have a personal interest described in paragraph 11.2 above or in paragraph 12.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 12.2 You also have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;
- 12.3 In paragraph 12.2, a *relevant person* is
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in paragraph 11.2(a) or (b).
- 12.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 11.2(a) or 11.2(b)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on

that business.

- 12.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 11.2(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 12.6 Where you have a personal interest but, by virtue of paragraph 16, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 12.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

13 NON PARTICIPATION IN CASE OF PREJUDICIAL INTEREST

- 13.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:
- (a) affects your financial position or the financial position of a person or body described in paragraph 12.3; or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 12.3.
- 13.2 Subject to paragraphs 13.3 and 13.4, where you have a prejudicial interest in any business of your authority:-
- (a) You must not participate in any discussion of the matter at the meeting.
 - (b) You must not participate in any vote taken on the matter at the meeting.
 - (c) If the interest is not registered, you must disclose the interest to the meeting.
 - (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- [Note: In addition Standing Order X requires you to leave the room where the meeting is held while any discussion or voting takes place].*
- 13.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- 13.4 *Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of:-*
- (a) *school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;*
 - (b) *statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay; and*
 - (c) *any ceremonial honour given to members.*

For the avoidance of doubt the following are NOT disclosable pecuniary interests:

- i. an allowance, payment or indemnity given to members;
- ii. setting council tax or a precept under the Local Government Finance Act 1992.

13.5 Where, as an executive member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

14. INTERESTS ARISING IN RELATION TO OVERVIEW AND SCRUTINY COMMITTEES

14.1 In any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where:-

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken,

you may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

PART 4 -GENERAL MATTERS RELATING TO PARTS 2 AND 3

15. REGISTER OF INTERESTS

15.1 Subject to paragraph 16 any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

16. SENSITIVE INTERESTS

16.1 This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

17. DISPENSATIONS

17.1 The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.

APPENDIX 2

Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members

1. INTRODUCTION

- 1.1 This procedure applies when a complaint is received that a Member or Co-opted Member of Tameside Borough Council or Mossley Town Parish Council Member has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as "the Complainant" and the person against whom the complaint is made will be referred to as the "Subject Member".
- 1.3 No Member or Officer of Tameside Borough Council or Mossley Town Parish Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2. MAKING A COMPLAINT

- 2.1 A complaint must be made in writing either by post or e-mail to the Borough Solicitor/ Monitoring Officer.
- 2.2 The Monitoring Officer will acknowledge receipt of the complaint within ten working days of receiving it, and at the same time, write to the Subject Member (and in the case of a complaint about Mossley Town Parish Council Member to the Clerk of the Parish Council also) with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within ten working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

3. INITIAL ASSESSMENT OF COMPLAINT

- 3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 30 working days of receipt of a complaint.
- 3.2 The complaint will be rejected if:-
 - The complaint is not against one or more named Members or co-opted Members of Tameside Borough Council or Mossley Town Parish Council;
 - The Subject Member was not in office at the time of the alleged conduct.
 - The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- 3.3 If the complaint has not been rejected on the grounds in 3.2 the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:
 - Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint

- has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
 - Whether the allegation is anonymous;
 - Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
 - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
 - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
 - Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
 - Whether the complaint suggests that there is a wider problem throughout the Authority;
 - Whether it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
 - Whether training or conciliation would be the appropriate response. The Monitoring Officer will consult with the Independent Person and then give his decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to [a Sub-Committee] of the Standards Committee.

4. ADDITIONAL INFORMATION

- 4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Mossley Town Parish Member, the Monitoring Officer may also inform the Clerk of Mossley Town Parish Council of the complaint and seek the views of the Clerk of Mossley Town Parish Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.
- 4.2 Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the Council (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.3.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code of Conduct.

5. CONFIDENTIALITY

- 5.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.
- 5.2 As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the

Complainant's identity being disclosed.

- 5.2 If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the subject Member.

6. INVESTIGATION

- 6.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer from another Council, or an external investigator.
- 6.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.
- 6.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.
- 6.4 At the end of their investigation, the Investigating Officer will produce a report and will send a copy of that report to the Monitoring Officer. *[The Investigating Officer may before that produce a draft report and send copies to the Complainant and Subject Member for comments on matters of fact. The Investigating Officer will take such comments into account before issuing their report to the Monitoring Officer]*

7. INVESTIGATING OFFICER FINDING OF NO FAILURE TO COMPLY WITH THE CODE OF CONDUCT

- 7.1 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 7.2 The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of Mossley Town Parish Council, where the complaint relates to a Mossley Town Parish Member), with a copy of the decision and the Investigating Officer's report.
- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8. INVESTIGATING OFFICER FINDING OF SUFFICIENT EVIDENCE OF FAILURE TO COMPLY WITH THE CODE OF CONDUCT

- 8.1 Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearing panel or seek local resolution.
- 8.2 **Local Resolution** - If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and

the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to Mossley Town Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the Complainant or the Subject Member.

- 8.3 **Local Hearing** - Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the Complainant and/or Subject Member refuses to accept local resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

9. CONSTITUTION OF THE HEARING PANEL

- 9.1 The Hearing Panel is a sub-committee of the Council's Standards Committee. It will comprise of at least one of the independent Persons co-opted to the Standards Committee and three elected Members of the Standards Committee of whom one should be a Member of the minority party. Where the complaint is about a Mossley Town Parish Council Member, the Hearings Panel will include at least one of the Mossley Town Parish Council Members co-opted to the Standards Committee.
- 9.2 The Independent Person is invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

10. THE INDEPENDENT PERSON

- 10.1 The Independent Person(s) must be appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.
- 10.2 A person is not eligible for appointment if they:
- are, a Member, co-opted Member or officer of the Council;
 - subject to para 10.3 below, have within the past five years been a Member, co-opted Member or officer of Tameside Borough Council,
 - are, or have been within the past five years, a Member or co-opted Member or officer of Mossley Town Parish Council; or
 - are a relative or close friend of a person within the bullet points above.
- 10.3 A person may be appointed as an Independent Person if they are not a Member of the Standards Committee on 1 July 2012, but have held such a post at any time during the 5 years ending on 30 June 2012, provided that this only applies to appointments made before 1 July 2013.
- 10.4 For the purpose of paragraph 10.2, "relative" means:
- Spouse or civil partner;
 - Living with the other person as husband and wife or as if they were civil partners;
 - Grandparents of the other person;
 - A lineal descendant of a grandparent of the other person;

- A parent, sibling or child of the person within the above bullet points;
- A spouse or civil partner of a person within the above bullet points; or Living with a person within the above bullet points as husband and wife or as if they were civil partners.

11. ACTION

11.1 Where a Hearing Panel finds that a Subject Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee (and the Standards Committee has sub-delegated to the Hearing Panel), such of its powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel may:-

- Publish its findings in respect of the Subject Member's conduct;
- Report its findings to Council (or to Mossley Town Parish Council) for information;
- Recommend to Council that the Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer (or recommend to Mossley Town Parish Council) to arrange training for the Member;
- Recommend to Council (or recommend to Mossley Town Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by Mossley Town Parish Council);
- Withdraw (or recommend to Mossley Town Parish Council that it withdraws) facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances

12. WITHDRAWAL OF A COMPLAINT

12.1 In the event that a Complainant withdraws a complaint at any time prior to a decision having been made by a Hearing Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

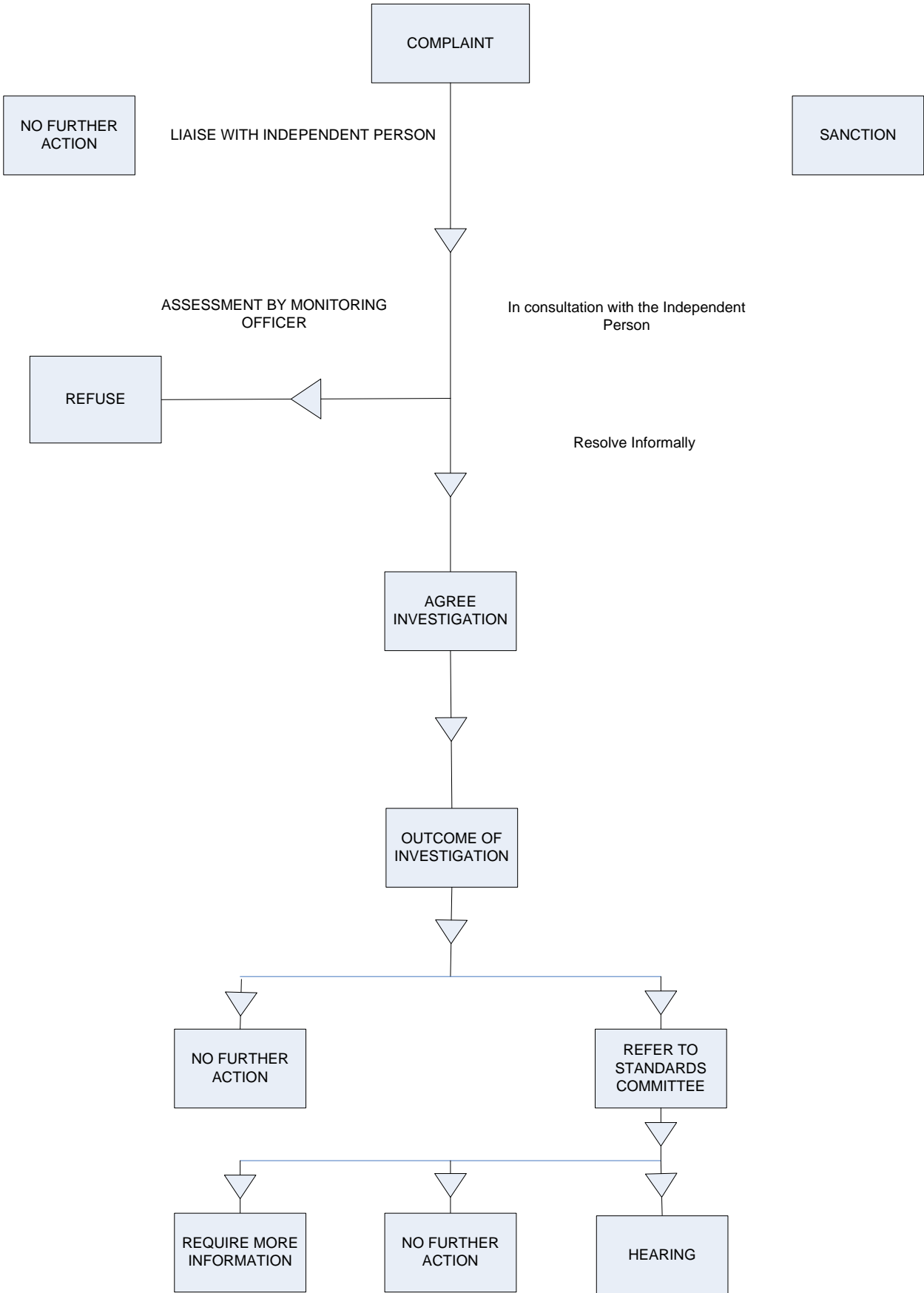
13. REVISION OF THESE ARRANGEMENTS

13.1 The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure fair consideration of any matters.

14. APPEALS

14.1 Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.

FLOW CHART COMPLAINTS



APPENDIX 3

DELEGATIONS TO STANDARDS COMMITTEE

Council is asked to delegate to Standards Committee the following powers:

1. To promote and maintain high standards of conduct by councillors, co-opted members and church and parent governor representatives;
2. To assist councillors, co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
3. To advise the Council on the adoption, revision or replacement of the Council's Code of Conduct for Members and the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements");
4. To monitor the operation of the Council's Code of Conduct for Members and the Council's Arrangements;
5. To advise, train, or arrange to train councillors and co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
6. To determine in accordance with the Council's Arrangements whether a Council member has failed to comply with the Council's Code of Conduct for Members and, if so, to determine what action (if any) to take in respect of the Council member.
7. To delegate such of the Council's powers as can be delegated to take decisions in respect of decisions in respect of a Council member who is found on a hearing in accordance with the Council's Arrangements to have failed to comply with the Council's Code of Conduct for Members, such actions to include –
 - Publication of the findings of the Standards (Hearing) Sub-Committee in respect of the Subject Member's conduct;
 - Reporting the findings of the Standards (Hearing) Sub-Committee to Council (or in the case of a complaint against a member of Mossley Town Parish Council to Mossley Town Parish Council), for information;
 - Recommendation to Council (or in the case of a complaint against a member of Mossley Town Parish Council to Mossley Town Parish Council), that the Subject Member should be censured;
 - Recommendation to the Subject Member's group leader (or in the case of ungrouped members to Council) that the Subject Member should be removed from any or all committees or sub-committees of the Council;
 - Recommendation to the Leader of the Council that the Subject Member should be removed from the Executive, or removed from their portfolio responsibilities.
 - Instructing the Monitoring Officer to (or in the case of a complaint against a member of Mossley Town Parish Council, recommending that Mossley Town Parish Council should) arrange training for the Subject Member;
 - Recommendation to Council (or in the case of a complaint against a member of Mossley Town Parish Council to Mossley Town Parish Council) that the Subject Member should be removed from all appointments to which the Subject Member has been appointed or nominated by the Council (or by Mossley Town Parish Council).
 - Withdrawal (or in the case of a complaint against a member of Mossley Town Parish Council, recommendation to Mossley Town Parish Council that it withdraws) facilities provided to the Subject member by the Council, such as a computer, website and/or e-mail and Internet access; or
 - Placing such restrictions (or in the case of a complaint against a member of Mossley Town

Parish Council, recommending to Mossley Town Parish Council that it places such restrictions) on the Subject Member's access to Council staff, buildings or parts or buildings as may be reasonable in the circumstances.

8. Dispensations
 - To grant dispensations from Section 31(4) of the Localism Act 2011 (after consultation with the Independent Person) if, having had regard to all relevant circumstances, the Standards Committee
 - (i) considers that granting the dispensation is in the interests of persons living in the Council's area, or
 - (ii) considers that it is otherwise appropriate to grant a dispensation.
9. To determine appeals against the Monitoring Officer's decision on the grant of dispensations.

APPENDIX 4

DELEGATIONS TO COUNCIL'S MONITORING OFFICER

Council is asked to delegate to the Council's Monitoring Officer the following powers:

1. To act as the Council's Proper Officer to receive complaints that Council members have failed to comply with the Council's Code of Conduct for Members;
2. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements") whether to reject, informally resolve or investigate a complaint.
3. To seek informal resolution of complaints that Council members have failed to comply with the Council's Code of Conduct for Members wherever practicable.
4. To refer decisions dealing with a complaint against a Council Member to the Standards Committee in exceptional circumstances.
5. To arrange for the appointment of an Investigating Officer to investigate a complaint where the Monitoring Officer (in consultation with the Independent Person) determines that a complaint merits formal investigation.
6. To issue guidance to be followed by an Investigating Officer on the investigation of complaints.
7. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, to confirm an Investigating Officer's finding of no failure to comply with the Council's Code of Conduct for Members.
8. Where an Investigating Officer's report finds that the Subject Member has failed to comply with Council's Code of Conduct for Members, to determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, either to seek a local resolution or to send a matter for local hearing.
9. *Independent Persons*
 - 9.1 To make arrangements, to advertise a vacancy for the appointment of (i) Independent Persons and (ii) Co-Opted Independent Members as and when required.
 - 9.2 To make arrangements, in consultation with the Chair of the Council's Standards Committee or Chair of Council Business for short-listing and interviewing candidates for appointment as Independent Persons and to make recommendations to Council for appointment.
10. *Council's Register of Member's Interests*
 - 10.1 To prepare and maintain a new Council Register of Member's Interests to comply with the requirements of the Localism Act 2011 and the Council's Code of Conduct for Members, and ensure that it is available for inspection and published on the Council's website as required by the Act.
 - 10.2 To prepare and maintain a new register of member's interests for Mossley Town Parish

Council to comply with the Localism Act 2011 and the Code of Conduct adopted by Mossley Town Parish Council and ensure that it is available for inspection as required by the Act.

11. *Dispensations*

11.1 To grant dispensations from Section 31(4) of the Localism Act 2011 if, having had regard to all relevant circumstances, the Monitoring Officer:-

- (i) considers that without the dispensation the number of persons prohibited by section 31(4) of the Localism Act from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
- (ii) considers that without the dispensation each member of the Council's Executive would be prohibited by section 31(4) of the Localism Act from participating in any particular business to be transacted by the Council's Executive.
- (iii) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.