

**STANDARDS
COMMITTEE**

25th July 2013

**LOCALISM ACT 2011 – UPDATED ARRANGEMENTS FOR HANDLING
STANDARDS COMPLAINTS AGAINST MEMBERS**

Relevant Portfolio Holder	Councillor John Fisher, Portfolio Holder for Corporate Management
Portfolio Holder Consulted	Yes
Relevant Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Ward(s) Affected	All Wards
Ward Councillor(s) Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 On 23 July 2012, the Council adopted Arrangements for Handling Complaints against Members under the new Standards regime introduced by the Localism Act 2011, to be reviewed after a year.
- 1.2 This Report incorporates a review of the working of the adopted Arrangements and suggests some amendment to them, which have come about as a result of their application over the last year.

2. RECOMMENDATIONS

The Committee is asked to **RECOMMEND** that

- 1) **The Arrangements for Managing Standards Complaints under the Localism Act (version 2) as attached at Appendix 1, be adopted; and**
- 2) **The role of the former Independent Member, who has served as a non-voting Independent Observer on the Standards Committee for the past year shall continue for the coming year.**

and **RESOLVE** that

- 3) **The make-up of the panels for Hearings Sub-Committee as set out at Appendix 2 be agreed.**

3. KEY ISSUES

Financial Implications

- 3.1 None.

Legal Implications

- 3.2 Under sections 28(6) and (7) of 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 Parish Council within the authority's area) has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.
- 3.3 Such Arrangements were adopted and it was agreed that they would be reviewed after the first year in operation.

Service / Operational Implications

Arrangements for Handling Standards Complaints against Members.

- 3.4 In the first year of the operation of the new Standards regime introduced by the Localism Act 2011 and the Arrangements for handling complaints against Members, the Monitoring Officer has dealt with a number of complaints. The general thrust of the Arrangements is that, in consultation with the Independent Person, a "local resolution" should be explored in the first instance and generally this approach has been successful.
- 3.5 The Code of Conduct regarding Member interests includes two types of interests: those which are classed in the Localism Act 2011 as "Disclosable Pecuniary Interests" [DPIs] and defined in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, and those which are classed as "Other Disclosable Interests" [ODIs] as described in the Code.

Referral of Complaints to Police

- 3.6 A breach of the provisions in the Localism Act relating to DPI is potentially a criminal offence, to be investigated by the Police and prosecuted by (or on behalf of) the Director of Public Prosecutions. A complaint regarding breach of a DPI could be made to the Monitoring Officer but could equally be referred directly by a complainant to the Police.
- 3.7 The existing Arrangements were formally adopted by the Council on 23 July 2012

Paragraph 4.3 provides: "If a complaint identifies possible criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police or other regulatory agency. The Monitoring Officer will, at the same time and in consultation with the Independent Person, continue to undertake any separate course of action which might be deemed necessary on behalf of the authority in relation to the complaint, with a view to maintaining high standards of member conduct".

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- 3.8 During the year a complaint was referred by the Monitoring Officer to the Police and it became apparent that this provision conflicts with how the Police require such complaints to be dealt with by the Monitoring Officer. The Arrangements have also proved inadequate in describing the role of the Monitoring officer after a referral has been made to the Police. There is no provision as to what the Monitoring Officer can do or what the Complainant, Subject Member or Standards Committee could expect from the Monitoring Officer in that situation.
- 3.9 The proposed amendments to the Arrangements address these issues so that where a matter is referred to the Police it will be clear that the Monitoring Officer will **not** take any further action in relation to the matter until the Police process has been concluded and that during that time the **only** information the Monitoring Officer will be able to give to the interested parties will be the fact that a complaint has been received and referred to the Police. The Monitoring Officer will be unable to take any other action or provide any further information on matter in the interim, however long that process may take.

Role of Assessment Sub-Committee

- 3.10 Paragraph 4.4 of the current Arrangements provides that *“The Monitoring Officer will review every complaint received and, after consultation with the Independent Person....may decide:*
- *that no further action be taken with the complaint;*
 - *to seek to resolve the complaint informally via local resolution; or*
 - *that a formal investigation into the complaint is required.*
- 3.11 Where the Monitoring Officers attempts to deal with the complaint informally but it cannot be resolved then the current Arrangements provide that *“the Monitoring Officer will, in consultation with the Independent Person, refer the matter to an Assessment sub-committee to determine whether the complaint merits formal investigation.”*
- 3.12 On the one occasion during the last year when this occurred, the sub-committee pointed out that under Para 4.4, the Monitoring Officer had already made certain enquiries in seeking to achieve a local resolution and that the only option left to resolve the complaint would be for a formal investigation to take place.
- 3.13 When the matter came before the assessment sub-committee the members felt that they were not actually carrying out an assessment as to whether or not a formal investigation were required but that they were being asked to support the conclusion already reached by the Monitoring Officer that the only way forward would be to proceed with an investigation. It would be highly unlikely in these circumstances that the sub-committee would find otherwise and decide that the complaint did *not* merit formal investigation. Their view was that there is no real “assessment” possible at this stage but merely a decision to support the

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Monitoring Officer's conclusion that an investigation was necessary.

- 3.14 This being so, the members of the sub-committee questioned whether the time and resources engaged in setting up the sub-committee served a useful purpose, whether it was necessary at all and whether a consultation with the Chair of the Standards Committee might not achieve the same outcome? The Arrangements have been amended to reflect this proposal so that in future cases, the Monitoring Officer, having consulted with the Independent Person, will then consult with the Chair of the Standards Committee to agree that that the matter be referred for investigation.
- 3.15 It is envisaged that the Chair of the Committee would inform the Vice-Chair and this has also been added to the proposed Arrangements.
- 3.16 The proposed changes to the Arrangements are highlighted in bold italics in Appendix.

Role of former Independent Member

- 3.17 Members may recall that when the new Standards regime was established a year ago, the Council agreed that, as a transitional arrangement, a former Independent Member of the previous Standards Committee should be co-opted on to the new Committee established under the Localism Act, as a non-voting Independent Observer.
- 3.18 It is recommended that this arrangement should continue for the coming year.

Parish Council Representative on Standards Committee

- 3.19 The composition of the Standards Committee under the Localism Act as adopted by the Council included one representative from Feckenham Parish Council to be co-opted onto the Committee as a non-voting member of the Committee.
- 3.20 There have been no complaints regarding Parish Council Members in the last year and there is no proposal to alter this arrangement.

Customer / Equalities and Diversity Implications

4. The new arrangements will be publicised on the Council's website and Officers will work to ensure that members of the public are made aware of the process for making a complaint through all existing community engagement events.

5. RISK MANAGEMENT

Recommending the inclusion of the proposals made in this report in the overall arrangements for the processing of complaints against members/co-opted members appended to the report will enable the Council to discharge its duty to

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consider and determine standards complaints and to discharge the duty to promote high standards in public life.

6. APPENDICES

Appendix 1 Version 2 Arrangements for Managing Standards Complaints under the Localism Act 2011

Appendix 2 Proposed Hearings Sub-Committee Panels

6. BACKGROUND PAPERS

Relevant sections of the Localism Act 2011.

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APPENDIX 1

**Arrangements for Managing Standards Complaints under the
Localism Act 2011**

1. Introduction

- 1.1 Sections 28(6) and (7) of the Localism Act 2011 require the Borough Council to have in place “arrangements” under which allegations that an elected Member or voting co-opted Member of the authority or of a parish council within the authority’s area, or of a committee or sub-committee of the authority or parish council, has failed to comply with the relevant authority’s Code of Conduct can be investigated and decisions made on such allegations.
- 1.2 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the Borough Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views may be sought by the authority at any other stage, or by the Member or co-opted Member against whom an allegation has been made.
- 1.3 These arrangements set out how a complaint that an elected or voting co-opted Member of the authority or of a parish council within the authority’s area has failed to comply with his/her authority’s Code of Conduct can be made, and how such allegations will be dealt with by the Borough Council.

2. The Code of Conduct

- 2.1 The Borough Council has adopted a Code of Conduct for Members. The Code is available on the authority’s website or on request from Reception at the Town Hall.
- 2.2 Feckenham Parish Council (the only Parish Council within the authority’s area) is also required to adopt a Code of Conduct. A copy of the Parish Council’s Code can be obtained from the Clerk to the Parish Council.

3. Making a complaint and complaint acknowledgement

- 3.1 Complaints must be made in writing to:

Mrs C Felton
Monitoring Officer
Redditch Borough Council
Town Hall
Walter Stranz Square
Redditch B98 8AH

Email: c.felton@bromsgroveandredditch.gov.uk

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- 3.2 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.
- 3.3 In order to ensure that the authority has all the information it needs to be able to process a complaint, the model Complaint Form should ideally be completed. The form is available on the authority's website or is available on request from Reception at the Town Hall.
- 3.4 Complainants are asked to provide their name and contact details in order that the Monitoring Officer can acknowledge receipt of the complaint and keep the complainant informed of progress with the complaint. If a complainant wishes to keep his/her details confidential this should be indicated on the form, in which case the authority will not disclose the complainant's details to the Member against whom a complaint has been made (the 'subject Member') without the complainant's prior consent. The authority would not normally investigate anonymous complaints unless there is a clear public interest in doing so.
- 3.5 The Monitoring Officer will issue a written acknowledgement of a complaint to the complainant within 3 working days of receiving it. At the same time the Monitoring Officer will write to the Member against whom the complaint has been made to notify them of the complaint (subject to 5.4 below). Both the complainant and the subject Member will be kept informed of progress with the complaint.
- 3.6 If, at any stage during the process, a complainant wishes to withdraw his/her complaint, the Monitoring Officer will consider, in consultation with the Independent Person, whether it is appropriate for the complaint to be terminated, or whether it is in the public interest for the complaint to proceed to conclusion.
- 4. Review of Complaint by the Monitoring Officer and options available to the Monitoring Officer following review**
- 4.1 The Monitoring Officer will review every complaint received and, following consultation with the Independent Person, will make a decision as to what action, if any, should be taken with the complaint. Where the Monitoring Officer has taken a decision, she will inform the subject Member, complainant, and if the subject Member is a parish councillor the Parish Council Clerk, in writing of her decision and the reason(s) for the decision.
- 4.2 Where the Monitoring Officer requires additional information in order to come to a decision, she may request information from the complainant, subject Member or any other relevant party. Examples of a relevant party include:

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- a Leader of a Political Group;
- a Chair, Vice-Chair, or Clerk or Executive Officer of a Parish Council;
- a representative of the Worcestershire Association of Local Councils;
- a representative of the Police or other relevant regulatory body;
- the Borough Council's Chief Executive; or
- any other party who the Monitoring Officer is of the opinion might be in a position to assist in providing relevant information in relation to a complaint.

- 4.3 *If a complaint identifies possible criminal conduct or breach of other regulation by any person the Monitoring Officer has the power to refer the matter to the Police or other regulatory agency. ~~The Monitoring Officer will, at the same time and in consultation with the Independent Person, continue to undertake any separate course of action which might be deemed necessary on behalf of the authority in relation to the complaint, with a view to maintaining high standards of Member conduct.~~***
- 4.4 *A complaint identifying possible criminal conduct, it shall be referred to the Police by the Monitoring Officer and, in accordance with Police requirements, the Monitoring Officer shall take no further action whatsoever in relation to the complaint until such time as the Police have concluded their investigation into the complaint and notified the Monitoring officer of its outcome.***
- 4.5 *When such a complaint is referred to the Police, the Monitoring Officer shall notify the Complainant only that the complaint has been received and referred to the Police, and that it will not be possible for any further information to be provided by the Monitoring Officer regarding the complaint for however long the Police may take in concluding their investigations.***
- 4.6 *If at the conclusion of their investigation, the Police decide not to take any action against the subject- Member, the Monitoring Officer will, in consultation with the Independent Person, consider whether any further action at local level may be deemed necessary on behalf of the Authority to maintain high standards of Member conduct.***
- 4.7 *The Monitoring Officer will establish a process for referring relevant complaints to the Police.***
- 4.8** Subject to 4.3 above, the Monitoring Officer may decide:
- that no further action be taken with respect to the complaint (which would apply where, for example, a complaint is found to be factually incorrect and therefore has no basis, or where a complaint is unsubstantiated or does not relate to a possible breach of the Code of Conduct);
 - to seek to resolve the complaint informally, via local resolution; or

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- that a formal investigation into the complaint is required.

In all cases the Monitoring Officer will write to the relevant parties detailing her decision and the reason(s) for the decision.

- 4.9 Where the Monitoring Officer attempts to deal with a complaint informally via local resolution she will liaise with the relevant parties to seek to agree a way forward. "Relevant parties" will always include the relevant Party Group Leader. If the subject Member accepts that his/her conduct was unacceptable and offers an apology, and/or other remedial action is offered or undertaken by either the subject Member or the authority, the Monitoring Officer will notify the complainant of any reasonable terms offered.
- 4.10 If the complainant and the subject Member accept the terms offered the Monitoring Officer will write to all relevant parties detailing the outcome and the matter will be closed.
- 4.11 *If the complainant or the subject Member (in consultation with the relevant Group Leader) does not accept the terms offered the Monitoring Officer will, in consultation with the Independent Person, refer the matter to an Assessment Sub-Committee of the Standards Committee to determine whether the complaint merits formal investigation, and the Chair of the Standards Committee refer the matter for formal investigation.***
- 4.12 *Where the Chair of the Standards Committee is consulted by the Monitoring Officer under 4.11, it is anticipated that the Chair of the Committee will inform the Vice-Chair of the Committee.***

5. Formal Investigation

- 5.1 The Council has delegated authority to the Monitoring Officer, in consultation with the Party Group Leaders, to determine the process for managing an investigation and a hearing.
- 5.2 *When, subject to 4.11 if either the Monitoring Officer or the Assessment Sub-Committee decides that a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer, who may be another Officer of the authority, an Officer of another authority or an external investigator.***
- 5.3 The Investigating Officer will conduct the investigation and in doing so will liaise with any relevant parties, as appropriate. The Investigating Officer will decide whether he/she needs to meet or speak with the complainant, the subject Member or any other parties to understand the nature of the complaint and so any parties can explain their understanding of events and suggest what

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documents the Investigating Officer might need to see, and who the Investigating Officer may need to interview.

- 5.4 In exceptional cases, where it is appropriate to keep a complainant's identity confidential or disclosure of details of the complaint to the subject Member might prejudice the investigation, the Monitoring Officer can delete the complainant's name and address from the papers given to the subject Member, or delay notifying the subject Member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and the subject Member, to give both parties an opportunity to comment on the report and identify any matters which are not agreed or which require further attention.
- 5.6 Having received and taken account of any comments which either the complainant or the subject Member might make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 5.7 The Monitoring Officer will review the Investigating Officer's final report and, in consultation with the Independent Person, will determine the next course of action to be taken with this. If the Monitoring Officer is not satisfied that the investigation has been conducted fully and feels that any aspect of the Investigating Officer's final report is incomplete, or requires further attention, she may ask the Investigating Officer to reconsider his/her report.

6. No evidence of a failure by the subject Member to comply with the Code of Conduct

If the Investigating Officer finds that there is no evidence of a failure by the subject Member to comply with the Code of Conduct and the Monitoring Officer is satisfied with the Investigating Officer's findings, the Monitoring Officer will, following consultation with the Independent Person, write to the complainant, the subject Member, and if the complaint relates to a parish councillor the Parish Council Clerk, confirming that she is satisfied that no further action is required. A copy of the final report will be sent to the complainant and subject Member and the matter will be closed.

7. Evidence of a failure by the subject Member to comply with the Code of Conduct

- 7.1 If the Investigating Officer finds that there is evidence of a failure by the subject Member to comply with the Code of Conduct and the Monitoring Officer is satisfied with the Investigating Officer's findings, the Monitoring Officer will, following consultation with the Independent Person and depending on the nature

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and seriousness of the failure in question, determine whether to send the matter for a local hearing of the Hearings Sub-Committee of the Standards Committee or to seek to resolve the matter via local resolution.

Local Resolution

- 7.2 If the Monitoring Officer attempts to conclude the matter via local resolution she will, in consultation with the Independent Person, liaise with the relevant parties to seek to agree a fair resolution, with a view to ensuring higher standards of conduct by the subject Member in the future. If a fair resolution is agreed and the subject Member complies with the suggested resolution the Monitoring Officer will write to the relevant parties to confirm the position and will report the matter to the Standards Committee for information. The matter will then be closed.
- 7.3 If the complainant tells the Monitoring Officer that any proposed resolution is not, in their view, adequate, or if the subject Member is not prepared to undertake any proposed action, such as giving an apology, the Monitoring Officer will, in consultation with the Independent Person, determine whether to close the matter without further action or to refer it for a local hearing. The Monitoring Officer will write to the relevant parties to confirm her decision and the reasons(s) for the decision.

Local Hearing

- 7.4 The Council has delegated authority to the Monitoring Officer, in consultation with the Party Group Leaders, to determine the process for managing an investigation and a hearing.
- 7.5 The Hearings Sub-Committee will decide whether the subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
- 7.6 *The Hearings Sub-Committee shall be chaired by a member of the political group to which the subject-Member does not belong.***
- 7.7 Where a local hearing is to take place, the Monitoring Officer will conduct a 'pre-hearing process' which is aimed at facilitating the smooth running of the hearing. As part of this process the subject Member will be asked to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chair of the Hearings Sub-Committee may also issue directions as to the manner in which the hearing will be conducted.
- 7.8 At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the subject Member has failed to comply with

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the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Sub-Committee. The subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

- 7.9 The Hearings Sub-Committee may, with the benefit of any advice from the Independent Person, conclude that the subject Member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the subject Member did fail to comply with the Code of Conduct, the Chair will inform the subject Member of this finding and the Sub-Committee will then consider what action, if any, should be taken as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the subject Member an opportunity to make representations in relation to the failure and will consult the Independent Person, and will then decide what action, if any, to take in respect of the matter.

8. Action that can be taken where a Member has failed to comply with the Code of Conduct

- 8.1 The Council has delegated to the Standards Committee and the Monitoring Officer authority to administer complaints in accordance with the agreed process. The following actions may be taken after a hearing:
- 8.1.1 Publish findings in respect of the Member's conduct;
 - 8.1.2 Report findings to Council, or to the Parish Council, for information;
 - 8.1.3 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 8.1.5 Instruct the Monitoring Officer to, or recommend that the Parish Council, arrange training for the Member;
 - 8.1.6 Remove the Member, or recommend to the Parish Council that the Member be removed, from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
 - 8.1.7 Withdraw, or recommend to the Parish Council that it withdraws, facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or

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8.1.8 Exclude, or recommend that the Parish Council exclude, the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

8.2 There is no power to suspend or disqualify the Member or to withdraw Members' or special responsibility allowances.

9. Decision of the Hearings Sub-Committee

9.1 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 Code of Conduct and any actions which the Sub-Committee resolves to take.

9.2 As soon as reasonably practicable after the hearing, the Legal Advisor to the Hearings Sub-Committee will prepare a formal decision notice in consultation with the Chair of the Sub-Committee. A copy of the decision notice will be sent to the complainant, the subject Member, and if the complaint relates to a parish councillor to the Parish Council Clerk. The decision notice will be made available for public inspection and the decision will be reported to the next convenient meeting of the Council.

10. Hearings Sub-Committee

10.1 The Hearings Sub-Committee is a Sub-Committee of the Council's Standards Committee.

10.2 The Independent Person will be invited to attend all meetings of the Hearings Sub-Committee and his/her views will be sought and taken into consideration before the Sub-Committee 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.

11. 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 –

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- 11.1 Is, or has been within the past 5 years, a Member, co-opted Member or Officer of the authority or the County Council, Fire Authority or Police Authority;
- 11.2 Is or has been within the past 5 years, a Member, co-opted Member or Officer of a parish council within the authority's area, or
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
- 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements and the Chair of the Hearings Sub-Committee may depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

- 13.1 There is no right of appeal for a complainant or the subject Member of a decision of the Monitoring Officer or of the Hearings Sub-Committee. Any decision would however, be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the Council had no power to impose.
- 13.2 If a complainant feels that the authority has failed to deal with his/her complaint properly, he/she may make a complaint to the Local Government Ombudsman.

APPENDIX 2

Sub-Committee 1

Cllr. P. Witherspoon (Chair), Cllr M. Chalk, Cllr J. Baker;

Sub-Committee 2

Cllr A. Fry (Chair), Cllr M. Braley, Cllr B. Quinney.

Sub-Committee 3

Cllr Derek Taylor (Chair), Cllr P. Mould, Cllr L. Stephens;