

# Luton Borough Council Constitution

## Section 4: Members & Standards

### Part 4 A: Code of Conduct for Members

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## Section 4: Members & Standards

### Part 4 A: Code of Conduct for Members

#### Part 1. General provisions

##### 1. Introduction

- 1.1 Luton Council is committed to promoting and maintaining high standards of conduct by Members and co-opted Members of the Council. The actions of those who represent the Council impact on how the Council as a whole is viewed. Misconduct can seriously damage the effectiveness and reputation of the Council and will not be tolerated. Those serving their communities must adhere to the high standards expected of them to promote public confidence in local democracy.
- 1.2 This Code applies to all Members of the Council; they should read this code together with any other relevant guidance, comply with it, and undertake the training provided by the Council.
- 1.3 Members must co-operate in any investigation or determination that is undertaken in accordance with this Code, not intimidate or attempt to intimidate any person involved or likely to be involved with the administration of any investigation or proceedings, including complainants and witnesses. The arrangements for dealing with allegations of misconduct made under this Code are set out at Appendix A.
- 1.4 This Code is consistent with the 7 principles of public life as set out below:
  - (1) Selflessness – decisions should be taken solely in the public interests and not in order to gain financial or other material benefits for self, family or friends.
  - (2) Integrity – financial or other obligations to outside individuals that might influence the performance of official duties should be avoided.
  - (3) Objectivity – in carrying out public business the making of appointments, awarding of contracts or recommending individuals for rewards or benefits should be done solely on merit/
  - (4) Accountability – Members are accountable for decisions and actions to the public and should submit themselves to whatever scrutiny is appropriate to their office. .
  - (5) Openness – decisions and actions should be taken as openly as possible. Reasons should be given for those decisions and information restricted only when the wider public interest clearly demands.
  - (6) Honesty – any private interests relating to public duties must be declared and steps taken to resolve any conflicts in a way that protects the public interest.
  - (7) Leadership – Members should promote and support these principles through leadership and example.

##### 2. Interpretation

- 2.1 In this Code:
  - (1) 'Meeting' means any meeting of:
    - (a) the Authority
    - (b) the Executive of the Authority and

- (c) any of the Authority's or the Executive's Committees, Sub-Committees, Joint Committees, Joint Sub-Committees (including the Health and Wellbeing Board and its Sub-Committees), and
- (d) shall for the purposes of this part of the constitution include any briefing by Officers and any site inspection to do with business of the Authority

(2) 'Member' includes a Co-opted Member and an appointed member.

### 3. Scope

3.1 Subject to paragraphs 3.2 and 3.4 of this Part 1 of this Code all Members must comply with this Code whenever they:

- (1) conduct the business of the Authority (which in this Code includes the business of the office to which the Member is elected or appointed) or
- (2) act, claim to act or give the impression that the Member is acting as a representative of the Authority

and references to a Member's official capacity shall be construed accordingly.

3.2 Subject to paragraphs 3.3 of this Part 1 of this Code, this Code does not have effect in relation to a Member's conduct other than where it is in his/her official capacity.

3.3 In addition to having effect in relation to conduct in a Member's official capacity, paragraphs 4.6 and 4.7 of Part 1 of this Code also have effect, at any other time, where that conduct constitutes a criminal offence for which the Member has been convicted (including an offence the Member committed before the date on which (s)he took office but for which the member is convicted after that date).

3.4 Where a Member acts as a representative of the Authority:

- (1) on another relevant Authority, as defined at Section 27(6) of the Localism Act 2011, a Member must, when acting for that other Authority, comply with that other Authority's Code of Conduct or
- (2) on any other body, the Member must, when acting for that other body, comply with the Authority's Code of Conduct (this Code of Conduct) except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### 4. General obligations

Every Member and Co-opted Member of Luton Borough Council must:

- 4.1 provide leadership to the Authority and communities within its area, by personal example
- 4.2 respect others and not bully or harass any person
- 4.3 have due regard to the Public Sector Equality Duty as set out at Section 149 of the Equality Act 2010 and not do anything which may cause the Authority to breach that duty
- 4.4 not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority
- 4.5 respect the confidentiality of information received by him/her as a Member:
  - (a) by not disclosing information given to him/her in confidence by anyone, or information obtained by them which they believe, or ought reasonably to be aware, is of a confidential nature to third parties unless:
    - i. s/he has the consent of a person authorised to give it, or

- ii. s/he is required by law to do so, or
    - 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. there is a clear and overriding public interest in doing so and the disclosure is made in good faith and in compliance with the reasonable requirements of the council, having consulted with the Monitoring Officer prior to its release.
  - (b) whilst not preventing anyone from getting information that they are entitled to by law.
- 4.6 not conduct himself/herself in a manner which could reasonably be regarded as bringing his/her office or the Authority into disrepute.
- 4.7 not use or attempt to use his/her position as a Member improperly to confer on or secure for himself/herself or for any other person, an advantage or disadvantage
- 4.8 when using or authorising the use by others of the resources of the Authority:
- (a) act in accordance with the Authority's reasonable requirements and
  - (b) ensure that such resources are not used improperly for political purposes (including party political purposes)
- 4.9 exercise his/her own independent judgement, taking decisions for good and substantial reasons:
- (a) attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views of political groups
  - (b) paying due regard to the advice of officers, in particular to the advice of the statutory chief officers and specifically the Chief Finance Officer and the Monitoring Officer in fulfilling their roles and
  - (c) stating the reasons for decisions where those reasons are not otherwise apparent
- 4.10 submit himself/herself to whatever scrutiny is appropriate to his/her office
- 4.11 whilst exercising his/her duties, ensure that s/he upholds the rule of law

## Part 2. Registration, disclosure and duties on interests held by a Member

### 1. Registration of Interests

- 1.1 Within 28 days of becoming a Member or re-election or re-appointment to office Members must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". Members should also register details of their other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).
- 1.2 "**Disclosable Pecuniary Interest**" means an interest of the Member, or of his or her partner if (s)he is aware of his or her partner's interest, within the descriptions set out in Table 1 below.
- 1.3 "**Partner**" means a spouse or civil partner, or a person with whom the Member is living as husband or wife, or a person with whom (s)he is living as if they are civil partners.
- 1.4 Members must ensure that their register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
- 1.5 A "**sensitive interest**" is as an interest which, if disclosed, could lead to the Member, or a person connected with the Member, being subject to violence or intimidation.
- 1.6 Where the Member has a 'sensitive interest' (s)he must notify the Monitoring Officer with the reasons why t(s)he believes it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### 2. Non participation in case of disclosable pecuniary interest

- 2.1 Where a matter arises at a meeting which directly relates to one of the Member's Disclosable Pecuniary Interests as set out in Table 1, (s)he must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless (s)he has been granted a dispensation. If it is a 'sensitive interest', (s)he does not have to disclose the nature of the interest, only that (s)he has an interest.
- 2.2 Dispensation may be granted in limited circumstances, to enable a Member to participate and vote on a matter in which (s)he has a disclosable pecuniary interest.

### 3. Disclosure of Other Registerable Interests

- 3.1 Where a matter arises at a meeting which directly relates to the financial interest or wellbeing of one of a Member's Other Registerable Interests (as set out in Table 2), (s)he must disclose the interest. (s)he may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless (s)he has been granted a dispensation. If it is a 'sensitive interest', the Member does not have to disclose the nature of the interest.

#### 4. Disclosure of Non-Registerable Interests

4.1 Where a matter arises at a meeting which directly relates to a Member’s financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, (s)he must disclose the interest. (S)he may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise (s)he must not take part in any discussion or vote on the matter and must not remain in the room unless (s)he has been granted a dispensation. If it is a ‘sensitive interest’, (s)he does not have to disclose the nature of the interest.

4.2 Where a matter arises at a meeting which affects –

- (1) The Member’s own financial interest or well-being;
- (2) a financial interest or well-being of a relative or close associate; or
- (3) a financial interest or wellbeing of a body included under Other Registrable Interests asset out in Table 2

(s)he must disclose the interest (that is, a personal interest). In order to determine whether (s)he can remain in the meeting after disclosing his or her interest the following test should be applied:

4.3 where a matter (referred to in paragraph 4 b) above) affects the financial interest or well-being:

- (1) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- (2) a reasonable member of the public knowing all the facts would believe that it would affect a Member’s view of the wider public interest (that is, a prejudicial interest)

the Member may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise the Member must not take part in any discussion or vote on the matter and must not remain in the room unless (s)he has been granted a dispensation.

If it is a ‘sensitive interest’, the Member does not have to disclose the nature of the interest.

#### 5. Dispensation

5.1 A Member may request a dispensation to permit him or her to participate in a meeting where it would not normally possible to do so. The protocol for applying for a dispensation is attached at Appendix B.

#### 6. Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

Subject	Description
Employment, office, trade, profession or vocation (including pensions relating thereto)	Any employment, office, trade, profession or vocation carried on for profit or gain. This includes any pensions arising therefrom.



<b>Subject</b>	<b>Description</b>
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council:</p> <p>a) under which goods or services are to be provided or works are to be executed; and</p> <p>b) which has not been fully discharged.</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licenses	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
Corporate tenancies	<p>Any tenancy where (to the councillor's knowledge)—</p> <p>a) the landlord is the council; and</p> <p>b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners has a beneficial interest in.</p>
Securities	<p>Any beneficial interest in securities* of a body where—</p> <p>a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>b) either—</p> <p>i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were a spouse/civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

\*'director' includes a member of the committee of management of an industrial and provident society.

\*'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.

## 7. Table 2: Other Registrable Interests

7.1 A Member must register as an Other Registerable Interest:

- (1) any unpaid directorships
- (2) any body of which (s)he is a member or is in a position of general control or management and to which (s)he is nominated or appointed by his/her authority
- (3) any body:
  - (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)

of which (s)he is a member or in a position of general control or management

## 8. No Prejudicial Interest

A Member does not have a Prejudicial Interest in any business of the Authority where that business:

- (1) does not affect his/her financial position or the financial position of a person or body described in paragraphs 3 and 4 of this Part 2 of this Code
- (2) does not relate to the determining of any approval, consent, licence, permission or registration in relation to that Member or any person or body described in paragraph 3 of this Part 2 of this Code
- (3) relates to the functions of the Authority in respect of:
  - (a) housing, where the Member is a tenant of the Authority provided that those functions do not relate particularly to his/her tenancy or lease
  - (b) school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends
  - (c) statutory sick pay under Part IX of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or is entitled to the receipt of, such pay
  - (d) an allowance, payment or indemnity given to Members
  - (e) any ceremonial honour given to Members and
  - (f) setting Council Tax or a precept under the Local Government Act 1992

## 9. Prejudicial Interests arising in relation to Overview and Scrutiny Committee

9.1 A Member has a Prejudicial Interest in any business before the Overview and Scrutiny Committee (or of any Scrutiny Body established thereby) where:

- (1) that business relates to a decision made (whether implemented or not) or taken by the Authority' Executive or another Local Authority's Committees, Sub-Committees, Joint Committees or Joint Sub-Committees and
- (2) at the time the decision was made or action was taken, the Member was a member of the Executive, Committee, Sub- Committee, Joint Committee or Joint Sub-Committee mentioned in (a) above and the Member was present when that decision was made or action was taken

#### 10. Compliance with Standing Orders relating to Interests

10.1 Every Member of Luton Borough Council must, in addition to the requirements above, comply with any and all obligations relating to rules contained within the Council's Standing Orders at Part 4 of the Constitution, namely:

- (1) Council Procedure Rules (Chapter 1)
- (2) Executive Procedure Rules (Part 3)

#### 11. Gifts and Hospitality

- (1) Every Member of Luton Borough Council must, for inclusion in the Register of Interests for a period of three (3) years, notify the Monitoring Officer within twenty eight (28) days and in writing of the receipt of any gift, benefit or hospitality with a value in excess of £50 which they have accepted as a Member from any person or body other than the Authority.
- (2) Modest hospitality provided it is normal and reasonable in the circumstances, e.g. lunches and/or dinners in the course of working visits, conferences or professional gatherings is acceptable and does not need to be declared and recorded.
- (3) If there is any doubt you should check with the Monitoring Officer before accepting gifts or hospitality

## Appendix A: Arrangements for dealing with standards allegations under the Localism Act 2011

### 1. Context

1.1 These “Arrangements” are made in accordance with section 28 (6) and (7) of the Localism Act 2011. They explain:

- (1) how to make a complaint that a Councillor or co-opted Member of Luton Council has failed to comply with the Code of Conduct for Members; and
- (2) how Luton Council will deal with the complaint.

All complaints will be dealt with in a transparent and timely manner and with a view that complaints are best resolved informally where possible.

### 2. Informal Resolution

2.1 Complainants and Subject Members (Councillors or co-opted Members against whom a complaint has been made) will, depending on the matter, be asked for their views on informal resolution at an early stage. Informal resolution remains open to the parties throughout the process even if a complaint has proceeded to the formal resolution stage.

### 3. The Code of Conduct

3.1 Luton Council’s Code of Conduct for Members is Part 9 of its Constitution. It can be found on the Council’s website at:

[https://www.luton.gov.uk/Council\\_government\\_and\\_democracy/Lists/LutonDocuments/PDF/Legal\\_Services\\_Division/Council\\_Constitution/part-9-code-of-conduct-members.pdf](https://www.luton.gov.uk/Council_government_and_democracy/Lists/LutonDocuments/PDF/Legal_Services_Division/Council_Constitution/part-9-code-of-conduct-members.pdf)

or requested from the Monitoring Officer at Town Hall, Luton, LU1 2BQ.

### 4. The Independent Person

4.1 The Council is required by section 28 (7) of the Localism Act 2011 to appoint at least one Independent Person whose views must be sought and taken into account before making a decision on a complaint that it has decided to investigate. The Council has a panel of Independent Persons appointed by the Council from which it chooses who to consult on each complaint.

In addition, either the Council or the Subject Member may consult the Independent Person at various stages in the complaints process.

Any view given by the Independent Person will be recorded by the Monitoring Officer and kept on file.

### 5. Making a Complaint

5.1 A complaint that a Councillor or a co-opted Member of Luton Council has failed to observe the Code of Conduct should be submitted to:

The Monitoring Officer  
Town Hall  
Luton  
LU1 2BQ

or by email at: [standards@luton.gov.uk](mailto:standards@luton.gov.uk)

or online at: [https://myforms.luton.gov.uk/service/Report\\_a\\_councillor\\_complaint](https://myforms.luton.gov.uk/service/Report_a_councillor_complaint)

- 5.2 The Monitoring Officer is a senior officer at Luton Council who has statutory responsibility for maintaining the Register of Councillor's Interests and who is responsible for administering the arrangements for complaints about alleged misconduct by councillors and co-opted members.
- 5.3 In order to ensure that the Monitoring Officer has all the information needed to process it, the complaint should be submitted using the model complaint form which can be found on the Council's website or requested from the Monitoring Officer at the above address.
- 5.4 The Council will not investigate an anonymous complaint unless there is a compelling public interest in doing so; therefore, complainants should provide their name, address and, where possible, their email address. The complaint form allows for the complainant to request that his or her identity be treated in confidence.
- 5.5 Complaints that a Councillor has failed to declare a pecuniary interest, or allegations that a Councillor has committed a criminal offence will, unless the complainant has already done so, be referred immediately to the police. The Monitoring Officer shall take no further action except as advised by the Police and shall not refer the complaint to the Subject Member for response. The rest of this procedure will not apply unless the Police decide that the complaint does not meet their prosecution threshold. When it is appropriate to do so, the Monitoring Officer will report the outcomes of such complaints to the Standards Committee.

## 6. Receipt of Complaint

- 6.1 Within five working days of receipt of a complaint, the Monitoring Officer will acknowledge receipt and initially review the complaint. In reviewing the grounds for the complaint, the Monitoring Officer may take a number of steps, such as:
- (1) Requesting further information from the complainant including evidence to support claims made or background to concerns raised;
  - (2) Referring the matter to an Independent Person for an objective assessment; or
  - (3) Determining that the complaint should not be taken forward for further assessment, based on the following criteria:
    - (a) When did the incident take place?
      - i. If the incident took place some time ago and the complainant has not provided legitimate justification for the delay in raising the matter(s) then it may not be considered.
      - ii. The evidence to support the complaint may be limited or impaired as a result of the delay, for example if the complaint was based on a conversation that took place some time ago and therefore recollection of the conversation may be limited. Generally, complaints that are about events that took place more than 3 months before will not be considered.
    - (b) Was the subject in personal capacity or acting in an official capacity?
      - i. The incident took place before the individual was a Councillor.
      - ii. The incident related to purely personal matters where there is no relation to action taken by the Council (such as a disagreement between neighbours).
    - (c) Is the complaint of a nature that is persistent or unreasonable, politically motivated or exercising a personal vendetta?

- i. The complainant has made a number of complaints, often against the same person which have little / no merit.
  - ii. The complainant is using the complaints system as another avenue for raising matters already considered elsewhere.
  - iii. The complainant is primarily disagreeing with a decision or actions of a political group / party, not the actions / behaviour of the Councillor.
- (d) Is pursuing the complaint in the public interest?
  - i. The matter was an isolated incident.
  - ii. There are no consequences as a result of the matter (for example, it would not impact on the validity of a decision made).
  - iii. The making of a complaint is disproportionate to the issue.
  - iv. There is little / no evidence to support the complaint and it is unlikely such evidence could be found.
- (e) Is the complainant unnecessarily abusive?
  - i. The complainant is overtly hostile or excessively abusive in their language and complaint, and clearly shows they have no regard for the Standards Process.

## 7. Initial Assessment

- 7.1 Where the Monitoring Officer is satisfied that a complaint should receive further consideration, s/he will notify and supply a full copy of the complaint to the Subject Member and asking each party whether he or she is prepared to consider informal resolution.
- 7.2 The Subject Member will normally be given five working days to respond in writing to the allegations made.
- 7.3 When the Monitoring Officer is in receipt of the Subject Member's response:
  - (1) If appropriate, s/he will seek to resolve the matter informally without the need for a formal investigation. This may include the Subject Member accepting his or her conduct was unacceptable and offering an apology or other remedial action. Where the Subject Member makes a reasonable offer of informal resolution but the Complainant is unwilling to accept the offer the Monitoring Officer can take this into account in deciding whether the matter merits formal investigation.
  - (2) The Monitoring Officer will consider and may consult the Independent Person on the following:
    - (a) was the Subject Member in office at the time of the misconduct?
    - (b) has the Subject Member formally accepted the Code of Conduct?
    - (c) was the Subject Member acting in his or her capacity as a Councillor at the time of the alleged misconduct?

If the answer to these questions is yes, the Monitoring Officer will go on to consider whether the alleged misconduct, if proven, would be a breach of the Code of Conduct.
  - (3) If the answer to this question is yes, the Monitoring Officer will further consider:
    - (a) Is the matter complained of very minor or trivial?
    - (b) Is the complaint vexatious or malicious?

- (c) Is the complaint historical?
  - (d) Would the investigation of the complaint be in the public interest?
  - (e) Any other substantial reasons affecting the decision.
- (4) The Monitoring Officer may (but is not obliged to) consult with the Independent Person before deciding whether to;
- (a) reject the complaint, with reasons;
  - (b) explore further informal resolution of the matter;
  - (c) investigate the matter (or appoint an investigator to investigate the matter); or
  - (d) refer the matter to a Sub-Committee of the Standards Committee (“the Local Assessment Panel”).

## 8. Monitoring Officer Decision Notice

- 8.1 The Monitoring Officer will issue a Decision Notice (which may take the form of an email) to the Complainant and the Subject Member explaining the reasons for the decision and setting out any other action that may need to be taken. This will be sent to the Complainant and the Subject Member within five days of the Monitoring Officer’s decision.
- 8.2 The Monitoring Officer will, where the Independent Person has been consulted, include the Independent Person’s views in this Decision Notice, but only where appropriate and particularly where the views of the Independent Person differ from those of the Monitoring Officer.
- 8.3 The Monitoring Officer will then report this matter, including an anonymised Decision Notice to the next meeting of the Standards Committee and inform the Committee of any outstanding action on the matter.

## 9. Referral of the Matter to a Local Assessment Panel

- 9.1 Where the Monitoring Officer considers that:
- (1) the matter is very serious;
  - (2) a conflict of interest has arisen;
  - (3) the matter is particularly complex;
  - (4) the matter is potentially going to attract a high level of public interest;
  - (5) the matter is politically sensitive; or
  - (6) there is any other substantial reason particular to the case in point
- (s)he will refer the matter to a Local Assessment Panel for a decision to be made.

## 10. Local Assessment Panel arrangements

- 10.1 The Local Assessment Panel will be formed of three Councillors and three Independent Members drawn from the membership of the Standards Committee.
- 10.2 As far as practicable, the Local Assessment Panel should be politically balanced.
- 10.3 The procedure to be followed at a Local Assessment Panel meeting is attached at Annex A.

## 11. Chairing

- 11.1 The Chair of the Standards Committee will normally chair the meeting, if the Chair is not present and the Vice-Chair of the Standards Committee is present, the Vice-Chair will chair the meeting. If neither the Standards Committee Chair nor Vice-Chair is present, a chair will be elected from amongst the Councillors on the Local Assessment Panel.

## 12. Involvement of Independent Persons

- 12.1 Where the Monitoring Officer has sought the view of an Independent Person prior to the matter being considered by the Local Assessment Panel, that Independent Person will be invited to attend the meeting.
- 12.2 The Independent Person is not a member of the Committee, however, they have the right to put forward their view and their view will be taken into account the Local Assessment Panel prior to making a decision.

## 13. Access to Information

- 13.1 All meetings will be conducted in accordance with the Council's Access to Information Rules.

## 14. Criteria considered by the Local Assessment Panel

- 14.1 The Local Assessment Panel will initially consider:
- (1) Was the Subject Member acting in their capacity as a Member at the time of the alleged misconduct?
  - (2) Was he or she in office at the time of the misconduct?

If the answer to these two questions is yes, the Local Assessment Panel will go on to consider the following question:

- 14.2 Could the Conduct, if proven, be a Breach of the Code of Conduct?

If the answer to this question is yes, the Local Assessment Panel will further consider:

- (1) whether, on the evidence provided so far, there appears to be a case to answer;
- (2) whether to investigate the complaint would be in the public interest;
- (3) any other substantial reason particular to the case in point.

## 15. Decision of the Local Assessment Panel

- 15.1 The Local Assessment Panel can decide to:
- (1) Take no further action with regard to the complaint, with reasons;
  - (2) refer the complaint to the Monitoring Officer for investigation; or
  - (3) refer the complaint to the Monitoring Officer for resolution.

- 15.2 A Decision Notice, setting out the Local Assessment Panel's decision will be sent to the Subject Member and the Complainant within five working days of the decision.

## 16. Investigation

- 16.1 If either the Local Assessment Panel or the Monitoring Officer determines that the complaint should be investigated the Monitoring Officer will appoint an Investigating Officer (which may be him or herself), who may be another senior officer of the Council, an officer of another Council or an external investigator.



- 16.2 The Investigating Officer will decide whether they need to meet or speak to the Complainant to understand the nature of the complaint, to obtain an understanding of events, to identify what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.
- 16.3 The Investigating Officer will contact the Subject Member against whom the complaint has been made to provide him/her with a copy of the complaint and to obtain the his or her explanation of events. The Subject Member will be invited to identify what documents the Investigating Officer needs to see and who in his or her opinion needs to be interviewed.
- 16.4 The Investigating Officer should provide an update and/or regular progress reports on the investigation to the Complainant and Subject Member, Chair and Vice-Chair of Standards Committee and the Monitoring Officer.
- 16.5 At any point during the investigation the Investigating Officer may refer the matter back to the Monitoring Officer if (s)he believes that the matter may be resolved without a complete investigation, or that the complaint should be rejected. The Monitoring Officer will, if the complaint was initially referred by him or her, consider what action to take, or, if the matter was originally referred for investigation by a Local Assessment Panel refer the matter back to the Panel who may make the decision to:
- (1) continue the investigation.
  - (2) reject the complaint with reasons
  - (3) seek resolution.
- 16.6 If the matter continues, at the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and to the Subject Member, to give them both an opportunity to identify any matter in the report with which they disagree or which requires more consideration.
- 16.7 Having received and taken account of any comments made on the draft report, the Investigating Officer will submit his or her final report to the Monitoring Officer. An investigation should not normally take more than three months from point of instruction of the Investigating Officer.
- 16.8 Upon receiving the Investigation Report, the Monitoring Officer will decide whether to take no further action, to refer to a Sub-Committee (a "Local Adjudication Panel") or to decide on other action in relation to the case. The Monitoring Officer will need to consult with the Independent Person when making this decision.
- 16.9 A Decision Notice, setting out the Monitoring Officer's decision will normally be sent to the Subject Councillor and the Complainant within five working days of the decision.
- 16.10 No decision on whether the Code has been breached will be made at this stage.
17. **Hearings**
- 17.1 If the matter is referred to a Local Adjudication Panel for a hearing, where practicable, the same Members as formed the Local Assessment Panel will comprise the Local Adjudication Panel. The procedure for the conduct of the hearing is attached at Annex B.
- 17.2 The Independent Person is invited to attend all meetings of the Local Adjudication Panel and his or her views will be sought and taken into consideration before the Local Adjudication Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and also as to any action to be taken following a finding of a failure to comply with the Code of Conduct.

- 17.3 The Local Adjudication Panel may conclude that the Subject Member did not breach the Code of Conduct, and so will dismiss the complaint.
- 17.4 If the Local Adjudication Panel concludes that the Subject Member has breached the Code of Conduct, the Chair of the Panel will inform the Subject Member of this finding and the Local Adjudication Panel will then consider what action, if any, should be taken as a result of the Subject Member's failure to comply with the Code.
- 17.5 Before reaching a decision on sanctions, the Local Adjudication Panel will give the Councillor an opportunity to make representations and will again consult with the Independent Person.

## 18. Sanctions

- 18.1 The Council has delegated to the Local Adjudication Panel authority to take such action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Some examples of sanctions that may apply are:
- (1) censure the Member;
  - (2) report its findings to the Council for information;
  - (3) instruct the Monitoring Officer to arrange training for the Member;
  - (4) recommend the Group Leader remove the Member from Committees or Executive;
  - (5) if applicable, recommend Full Council replace the Member as Leader;
  - (6) withdraw facilities (only where this is an appropriate response in the context of the acts complained of and must not prevent the Subject Member from carrying out their duties as a Member); or
  - (7) bar from the offices and put on single point of contact (only where this is an appropriate response in the context of the acts complained of and must not prevent the Subject Member from carrying out their duties as a Member).
- 18.2 The Standards Committee has no power to suspend or disqualify the Member or to withdraw any Special Responsibility Allowances to which the Member may be entitled under the Council's Members' Allowances Scheme. Any sanctions applied will, only commence after the appeal period has expired and any appeal has been concluded.
- 18.3 A Decision Notice, setting out the Panel's decision will be sent to the Subject Member and the Complainant within five working days of the decision.

## 19. Publication

- 19.1 All final decisions will be published on the Council's website once the Complainant and Subject Member have been notified.
- 19.2 Once a matter is concluded any investigation report will also be published on the Council's website.
- 19.3 The Monitoring Officer will decide if any redaction is necessary in respect of the above documents.

## 20. Appeal

- 20.1 If either the Complainant or the Subject Member is dissatisfied with the outcome, (s)he may appeal to the Monitoring Officer at the above address (as indicated in section 4).

- 20.2 Any appeal must be received in writing within 10 working days of issue of the written decision notice and may only be made on the grounds of:
- (1) the procedure being wrongly applied; or
  - (2) new evidence has come to light since the meeting of the Local Adjudication Panel); or
  - (3) there has been a misdirection in law
- which has, in the appellant's view, resulted in an unfair decision.
- 20.3 An Appeals Panel consisting of no fewer than three Members of the Standards Committee on a politically balanced basis, where possible, will be convened to hear the appeal.
- 20.4 The members of the Appeals Panel must not previously have sat on either the Local Assessment Panel or Local Adjudication Panel relating to the complaint in question. A different Independent Person will also be asked to give his or her views.
- 20.5 Depending on the subject matter of the appeal it may be appropriate to conduct the matter on papers only.
- 20.6 A Decision Notice, setting out the Appeals Panel's decision will be sent to the Subject Member and the Complainant within ten working days of the decision.
- 20.7 There is no further right to appeal in the Council process.

## 21. Explanatory note

- 21.1 Independent Members – although no longer required by law, Luton Council has decided to continue to appoint members of the public to its Standards Committee as independent members. They bring a different perspective to the issues considered by the Committee. They sit on Local Assessment and Local Adjudication Panels and take a full part in the discussion but they do not vote. All decisions are made by those members of the panels who are Councillors.
- 21.2 Independent Person - the role of "independent person" has been created by the Localism Act 2011. The Act requires all local authorities to adopt a code of conduct for their elected members and to appoint at least one independent person to assist the Council in dealing with complaints that the code of conduct may have been breached. If the Council has decided to investigate an allegation that the code of conduct has been breached then the views of the independent person must be sought, and taken into account, before the Council makes its decision on any such allegation. The Council may (at the discretion of the Monitoring Officer) also seek the views of the independent person in relation to allegations where no decision to investigate has been made. In addition any Councillor, who has been complained about may seek the views of the independent person(s).
- 21.3 An independent member of the Standards Committee may not act as the independent person in relation to any complaint being considered by the Council.

## Annex 1 to Appendix A: Standards Committee Local Assessment Panel

### 1. Procedure

- 1.1 The Local Assessment Panel (“the Panel”) will be assisted on matters of law and procedure by its Clerk who will be one of the Council’s solicitors (“the Panel’s advisor”).
- 1.2 Election of Chair (The Chair must be an Elected Member).
- 1.3 The Chair of the Panel (“the Chair”) will give a very brief outline of the allegation before the Panel and introduce the Members of the Panel, the Independent Person (if present), the Panel’s advisor, the Monitoring Officer (or his/her representative), and any other persons present. The Panel’s advisor will briefly outline the procedure to be followed and confirm that those present understand it.
- 1.4 The meeting will be held in private as the papers contain exempt information concerning an identifiable individual.
- 1.5 The Panel may take legal advice from the Panel's advisor at any time during the meeting or while they are considering the outcome. The substance of any legal advice given should be shared with the Subject Member and the Monitoring Officer if they are present.
- 1.6 The Monitoring Officer (or their representative) will present the report into the allegation against the Subject Member, outlining the substance of the allegations, setting out the manner in which it is alleged that he/she has breached the Council’s Code of Conduct for Members (“the Code”) and any initial response from the Subject Member in relation to that allegation..
- 1.7 The Panel may question the Monitoring Officer.
- 1.8 The Monitoring Officer will sum up his/her case.
- 1.9 The Independent Person (if present) will give his/her views to the Panel.
- 1.10 The Panel's Advisor will then raise any points that need to be raised before the matter is determined.
- 1.11 The Panel will then retire and all those present except for the Panel, the Panel’s Advisor, and any person present solely for the purpose of taking notes of the meeting, will then withdraw whilst the Panel makes its deliberations.
- 1.12 The Panel will announce their decision in the presence of all parties as to whether appears to be a case to answer and, if so, the steps that it considers should be taken in relation to the further investigation into the allegation and the adjudication of the allegation. .
- 1.13 As soon as reasonably practicable thereafter, the Panel’s advisor shall prepare a formal decision notice in consultation with the Chair of the Panel, and send a copy to the Complainant, the Subject Member and the Monitoring Officer. The Monitoring Officer will ensure that the decision notice is made available for public inspection and report the decision to the next convenient meeting of the Council’s Standards Committee.

## Annex 2 to Appendix A: Standards Committee Local Adjudication Panel

### 1. Hearings procedure

- 1.1 The Local Adjudication Panel (“the Panel”) will be assisted on matters of law and procedure by its Clerk who will be one of the Council’s solicitors (“the Panel’s advisor”).
- 1.2 The Chair of the Panel will usually be the member of the Panel who chaired the meeting of the Local Assessment Panel. If that person is not available, a Chair of the Panel (“the Chair”) will be elected.
- 1.3 The Chair will give a very brief outline of the allegation before the Panel and introduce the Members of the Panel, the Monitoring Officer, the Independent Person, the Panel’s advisor, the person presenting the findings of the investigation into the allegation (“the Investigating Officer”), the complainant(s) if present, the Member subject to the allegation (“the Subject Member”) if present and any other persons present. The Chair will outline the procedure to be followed and confirm that those present understand it.
- 1.4 The Subject Member may be represented or accompanied by counsel or a solicitor or, with the permission of the Panel, any other person.
- 1.5 The hearing will normally be in public, unless the Panel has decided, on the advice of the Monitoring Officer, to hold the meeting in private because the papers contain exempt information identifying an individual and the public interest in withholding that information is greater than the public interest in disclosing it. That decision will be taken prior to the publication of the agenda.
- 1.6 If the meeting is to be held in public, the Panel will consider, having regard to any representations made by the Subject Member and to the public interest, whether to hear the matter after the passing of a resolution to exclude the public from the meeting. Any such resolution may only be passed on the grounds set out in Section 100A and Schedule 12A to the Local Government Act 1972.
- 1.7 The Panel may take legal advice, in private if necessary, from the Panel’s advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given should be shared with the Subject Member and the Investigating Officer if they are present.
- 1.8 The Investigating Officer will present the report into the allegation against the Subject Member including any findings of fact in the report and the Investigating Officer’s findings in relation to whether the Subject Member has breached the Council’s Code of Conduct for Members (“the Code”).
- 1.9 The complainant(s) (if present) may question the Investigating Officer.
- 1.10 The Subject Member may question the Investigating Officer.
- 1.11 The Panel may question the Investigating Officer.
- 1.12 The Investigating Officer may call any witness(es).
- 1.13 The complainant(s) may question any witness(es) brought by the Investigating Officer.
- 1.14 The Subject Member may question any witness(es) called by the Investigating Officer.
- 1.15 The Panel may question any witness called by the Investigating Officer.

- 1.16 The Investigating Officer may ask further questions of any witness in order to clarify any point brought out in questioning of the witness by the compliant(s), Subject Member or the Panel.
- 1.17 The Subject Member or their representative will present his/her case in relation to the Investigating Officer's findings and whether (s)he has breached the Code. If the Subject Member admits that (s)he has breached the Code the Panel may move to Paragraph 21 below.
- 1.18 The Investigating Officer may question the Subject Member.
- 1.19 The Panel may question the Subject Member.
- 1.20 The Subject Member may call any witness(es).
- 1.21 The Investigating Officer may question any witness called by the Subject Member.
- 1.22 The Panel may question any witness called by the Subject Member.
- 1.23 The Subject Member may ask further questions of any witness in order to clarify any point brought out in questioning of the witness by the Investigating Officer or the Panel.
- 1.24 The Independent Person may ask questions of the Investigating Officer, the Subject Member and any witness called by the Investigating Officer or the Subject Member after such persons have been questioned by the Panel.
- 1.25 The Subject Member will sum up his/her case in relation to the findings in the Investigation report of whether there has been a breach of the Code.
- 1.26 The Independent Person will give his views to the Panel. The Panel must take into account the views of the Independent Person before reaching a decision
- 1.27 The Panel will then retire or all those present except for the Panel, the Monitoring Officer, the Panel's advisor and any person present solely for the purpose of taking notes of the meeting, will then withdraw. If the hearing has been in public the Committee will need to pass a resolution under Section 100A of the Local Government Act 1972 to exclude the public from the meeting. .
- 1.28 The Panel will announce their decision as to whether there has been a breach of the Code in the presence of all parties, and this will normally be after passing a resolution that the public should no longer be excluded from the meeting.
- 1.29 If the Panel decide that the Subject Member has not breached the Code, the Panel will consider whether they should make any recommendations to the Council.
- 1.30 If the Panel decide that the Subject Member has breached the Code then Paragraphs 30 to 39 below will apply.
- 1.31 The Panel may request or allow the person who made the allegation against the Subject Member ("the Complainant"), whether or not called as a witness, to make a statement in relation to the effect on the Complainant of any conduct of the Subject Member towards the Complainant which is the subject of the allegation. Such a statement may be made in person to the Panel or may be submitted in writing, but if submitted in writing will be shown to both the Investigating Officer and the Subject Member. A Complainant who makes such a statement may be questioned by the Panel but may not be questioned in relation to the statement by the Investigating Officer or the Subject Member without the consent of the Panel.

- 1.32 The Investigating Officer may make representations as to whether the Panel should impose a sanction and what form any sanction should take.
- 1.33 The Panel may question the Investigating Officer in relation to any such representations.
- 1.34 The Subject Member may make representations as to whether the Panel should impose a sanction and what form any sanction should take.
- 1.35 The Panel may question the Subject Member in relation to any such representations.
- 1.36 The Monitoring Officer and the Panel's advisor will then raise any points that need to be raised before the matter is determined.
- 1.37 The Subject Member will be asked whether there is anything further he/she wishes to say.
- 1.38 The Independent Person will then give their views on the appropriate sanction, if any, to be imposed.
- 1.39 The Panel will then retire or all those present except for the Panel, the Monitoring Officer, the Panel's advisor and any person present solely for the purpose of taking notes of the meeting, will then withdraw. If the hearing has been in public the Committee will need to pass a resolution under Section 100A of the Local Government Act 1972 to exclude the public from the meeting.
- 1.40 The Panel will come to a decision as to the sanction to be imposed.
- 1.41 The Panel will announce its decision in the presence of all parties, and this will normally be after passing a resolution that the public should no longer be excluded from the meeting. A full written decision will be prepared by the Panel's advisor, in consultation with the Monitoring Officer, for approval by the Chair and sent to the Subject Member and the Investigating Officer and any other relevant parties within five working days of the Hearing.
- 1.42 An appeal against the decision of the Panel may only be made on specified grounds within 10 working days of the issue of the written decision. Details of that process will be set out in the written decision.

## Appendix B: Luton Council Dispensations Protocol

### 1. Guide to Dispensations

- 1.1 The council is responsible for determining requests for a dispensation by a member under s.33 of the Localism Act 2011. The council may grant a dispensation to an elected or co-opted member on a matter with which they would otherwise not be permitted to deal, as a result of having a Disclosable Pecuniary Interest.
- 1.2 This guide explains:
  - (1) The purpose and effect of dispensations
  - (2) The procedure for requesting dispensations
  - (3) The criteria applied in determining dispensation requests
  - (4) The terms of dispensations
- 1.3 Until a dispensation is granted, a member may not participate in the consideration of the matter before the council (or any committee or sub-committee) in which they have a Disclosable Pecuniary Interest.
- 1.4 A member may also have a close Personal Interest under the Member Code of Conduct and should also use this same procedure to request a dispensation in respect of that interest.

### 2. Purpose and effect of dispensations

- 2.1 In certain circumstances, members may be granted a dispensation that enables them to take part in council business where this would otherwise be prohibited because they have a Disclosable Pecuniary Interest or a close Personal Interest. Provided members act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.
- 2.2 Section 31(4) of the Localism Act 2011 states that dispensations may allow the member to:
  - (1) participate, or participate further, in any discussion of the matter at the meeting(s); and/or
  - (2) participate in any vote, or further vote, taken on the matter at the meeting(s)
- 2.3 If a dispensation is granted, the member may remain in the room where the meeting considering the business is being held.
- 2.4 Please note: if a member participates in a meeting where they have a Disclosable Pecuniary Interest and they do not have a dispensation, they may be committing a criminal offence under section 34 of the Localism Act 2011.
- 2.5 The same procedure will be used for applications close Personal Interests, enabling a member to remain in the meeting and to speak and vote.

### 3. Process for making requests

- 3.1 A request for dispensation must be made on an individual basis. Any member who wishes to apply for a dispensation should fully complete a Dispensation Application Form (Appendix 1) and submit it to the Monitoring Officer, explaining why it is desirable and appropriate to grant the dispensation.



#### 4. Approval Process

- 4.1 The Monitoring Officer (or Deputy Monitoring Officer where the Monitoring Officer is absent) may only grant a dispensation to a member who has a Disclosable Pecuniary Interest or close Personal Interest, allowing them to participate in any discussion of a matter at a
- 4.2 meeting and/or to participate in any vote on the matter (as per paragraph 2 above), if they consider that:
- (1) without the dispensation, the number of persons prohibited 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,
  - (2) 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,
  - (3) without the dispensation, each member of the authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive,
  - (4) granting the dispensation is in the interests of persons living in the authority's area, or
  - (5) it is otherwise appropriate to grant a dispensation.
- 4.3 The Standards Committee also has the delegated power to agree dispensations.
- 4.4 Applications dealt with by the Monitoring Officer will normally be determined within 10 working days.
- 4.5 Applications made to the Standards Committee will go to the next ordinary meeting or it may be appropriate to arrange a special meeting at the discretion of the chair of the committee. Applications must be received at least 15 working days before a meeting to enable a report to be prepared and the agenda published in accordance with the Council's usual timescale.
- 4.6 The Monitoring Officer will formally notify the member of the decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

#### 5. Criteria for determination of requests

- 5.1 In reaching a decision on a request for a dispensation, the Monitoring Officer (in consultation with an Independent Person) will consider:
- (1) The nature of the member's interest
  - (2) The extent to which the request could have been avoided or other arrangements could be made
  - (3) The need to maintain public confidence in the conduct of the council's business
  - (4) The extent to which there is some personal benefit and the extent of the public benefit obtained by agreeing to a dispensation
  - (5) The possible outcome of the proposed vote
  - (6) The need for efficient and effective conduct of the council's business
  - (7) Any other relevant circumstances

#### 6. Terms of dispensations

- 6.1 Dispensations may be:

- (1) Granted for one meeting or for a period not exceeding 4 years
- (2) Subject to specific conditions, e.g. notification of any material change in circumstances arising from the dispensation

#### 7. Disclosure of decision

- 7.1 Any member who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.
- 7.2 A copy of the dispensation will be kept with the Register of Members' Interests.

#### 8. Dispensations for Conflicts of Interest when taking Executive decisions

- 8.1 Under regulations 12 and 13 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the record of an Executive decision made either at meetings or by individuals, must include:
  - (1) details of any conflict of interest either declared by any member of the body which made the decision or declared by any Executive member consulted by the member or officer taking the decision which relates to that decision;
  - (2) In respect of any such conflict of interest, a note of dispensation granted by the Chief Executive.
- 8.2 Please note: A conflict of interest is broader than a Disclosable Pecuniary Interest. It can be any interest that conflicts (or may reasonably be perceived to conflict) with a member's duty to take decisions only in the public interest in the light of material considerations.

## Annex 1 to Appendix B: Application for a dispensation under section 33 of the Localism Act 2011 in respect of a disclosable pecuniary interest

### Form details

To: Luton Council's Monitoring Officer

Please provide the answers to the following questions

(1) Name of member:

A member who has a Disclosable Pecuniary Interest or close Personal Interest in a matter that is under consideration may not participate in the consideration of that matter by the council, a committee or sub-committee or by the Executive or a committee of the Executive unless they have first obtained a dispensation from the council.

You may apply for a dispensation by completing this form and sending it to the Monitoring Officer.

(2) What is the matter for which dispensation is sought?

Please provide full details including amounts where the matter involves funding or finance.

(3) For which type of meeting is dispensation sought?

(Full Council, Executive, Committee or Sub-Committee) (if a Committee or Sub-Committee, which?)

(4) What is the nature of the Disclosable Pecuniary Interest or close Personal Interest?

Please provide full details.

(5) What is the date of the meeting(s) at which this matter is to be considered?

(6) For how long is the dispensation needed?

Please note that it cannot be longer than 4 years nor exceed the term of office of the member concerned.

(7) Do you benefit personally from the business to which this application relates?

If "yes" the full details must be provided of the nature and extent.

(8) How is the business of the council being impeded in the absence of a dispensation?

(9) Are there any other factors that might help the council to reach a decision on the application?

(10) Are you seeking a dispensation to speak and vote?

Yes/ No

(11) Are you seeking a dispensation to speak but not vote?

Yes/ No

Please complete, sign and return to the Monitoring Officer