

Meeting of the Standards Sub-Committee

Monday, 20th June, 2022 at 10.00am

In Committee Room 3 at the Council House, Priory Road, Dudley

Agenda - Public Session

(Meeting open to the public and press)

1. Apologies for absence.
2. To report the appointment of any substitute members serving for this meeting of the Sub-Committee.
3. To receive any declarations of interest under the Members' Code of Conduct.
4. To confirm and sign the minutes of the meeting held on 28th January, 2022 as a correct record (previously circulated and [available online](#)).
5. To consider any questions from Members to the Chair where two clear days notice has been given to the Monitoring Officer (Council Procedure Rule 11.8).
6. Standards Investigation.



Chief Executive

Dated: 10th June, 2022

Distribution:

Members of the Standards Sub-Committee



Please note the following concerning meetings at Dudley Council House:

Health and safety

- Windows/doors will be opened to provide adequate ventilation.
- Please ensure you sanitise your hands when arriving and leaving the building. Hand washing facilities are also available on site.
- Hand sanitiser and antibacterial wipes are available at various locations.
- All persons entering or working in the Council House are encouraged to wear face masks in communal areas and when moving around the building. The Council has a supply of surgical masks for use in meetings.
- Face masks may be removed when you are participating in the meeting.
- All people attending are encouraged to undertake Lateral Flow Tests twice a week (a supply of kits is available at the Council House). Anyone testing positive should not attend and should seek further advice including self-isolation and taking a PCR test.
- Do not attend if you feel unwell; if you have tested positive for Covid-19; if you are self-isolating or if you suspect that you are symptomatic.
- All people are encouraged to be fully vaccinated to limit any potential ill-health effects.
- Please be respectful of everyone's personal space and preferences when you attend meetings.

Toilets

- Toilet facilities are available on site and are subject to the Covid-19 secure measures that are in place. All the toilets have hand washing facilities.

No smoking

- There is no smoking on the Council House premises in line with national legislation. It is an offence to smoke in or on the premises. You cannot use e-cigarettes and/or similar vaping devices.

In Case of Emergency

- In the event of the alarms sounding, please leave the building by the nearest exit. There are Officers who will assist you in the event of this happening, please follow their instructions.



Submitting Apologies for Absence

- Elected Members can submit apologies by contacting Democratic Services (see our contact details below). Members wishing to appoint a substitute should notify Democratic Services as soon as possible in advance of the meeting. Any substitute Members must be eligible to serve on the meeting in question (for example, he/she must have received the training required by the Council).

Private and Confidential Information

- Any agendas containing reports with 'exempt' information should be treated as private and confidential. It is your responsibility to ensure that information containing private and personal data is kept safe and secure at all times. Confidential papers should be handed to Democratic Services for secure disposal. If you choose to retain the documents you should ensure that the information is securely stored and destroyed within six months.

General

- Public Wi-Fi is available in the Council House.
- The use of mobile devices or electronic facilities is permitted for the purposes of recording/reporting during the public session of the meeting. The use of any such devices must not disrupt the meeting – Please turn off any ringtones or set your devices to silent.
- Information about the Council and our meetings can be viewed on the website www.dudley.gov.uk

If you need advice or assistance

- If you (or anyone you know) requires assistance to access the venue, or if you have any other queries, please contact Democratic Services - Telephone 01384 815238 or E-mail Democratic.Services@dudley.gov.uk



Standards Sub-Committee Procedure

1. To receive any apologies for absence.
2. To report the appointment of any substitute Members for this meeting of the Sub-Committee.
3. To receive any declarations of interest under the Members' Code of Conduct.
4. To confirm the minutes of the meeting held on 28th January, 2022 as a correct record.
5. To consider any questions from Members to the Chair where two clear days notice has been given to the Monitoring Officer (Council Procedure Rule 11.8).
6. The Sub-Committee will consider whether the meeting should continue in public or private session under the provisions of the Local Government Act 1972
7. Chair of the Sub-Committee to make introductions.
8. The Chair will confirm that the Member may be represented or accompanied during the meeting by a person of their choice.
9. The Independent Person shall be entitled to attend the meeting to give advice and views to the Sub-Committee at any stage.
10. The Chair will explain the procedure to be followed at the hearing.
11. The Sub-Committee may adjourn to take advice, in private if necessary, at any time during the hearing.
12. The Sub-Committee shall resolve any issues or disagreements about how the meeting should continue that have not been resolved prior to the meeting during the pre-hearing process.
13. Monitoring Officer to present his report to the Sub-Committee.

Findings of Fact

14. Investigator to present his report, call any witnesses, and to make any representations to the Sub-Committee.
15. Chair to invite any questions to the Monitoring Officer, Investigator, any witnesses or the Complainant from (i) the Member, (ii) the Independent Person and (iii) the Sub-Committee.
16. Chair to invite the Member to give his evidence, call witnesses and to make representations to the Sub-Committee.
17. Chair to invite any questions to the Member or any witnesses from (i) the Monitoring Officer, (ii) the Investigator, (iii) the Independent Person and (iv) the Sub-Committee.
18. If the Member disagrees with any relevant fact in the Investigator's report, the procedure on page F20 of the Constitution must be followed.
19. Adjournment for the Sub-Committee to consider the findings of fact in private.
20. Chair to announce the Sub-Committee's findings of fact.

Members' Code of Conduct

21. The Sub-Committee to consider whether, based on the facts it has found, that the Member has failed to follow the Members' Code of Conduct.
22. Chair to invite the Member to give relevant reasons why the Sub-Committee should decide that he has not failed to follow the Code.
23. Chair to invite representations from the Investigator.
24. Chair to invite representations from the Independent Person.
25. The Sub-Committee may, at any time, question anyone involved on any points they raise on their representations.
26. Chair to invite the Member to make any final relevant points.
27. The Sub-Committee will then adjourn to consider the representations and evidence in private as to whether the Member failed to comply with the Code of Conduct.
28. Chair will announce the Sub-Committee's decision as to whether the Member has failed to follow the Code.

29. If the Sub-Committee decides that the Member has not failed to follow the Code, the Sub-Committee can move on to consider whether it should make any recommendations to the Council.
30. If the Sub-Committee decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the Investigator and the Member as to:
 - Whether the Sub-Committee should take any action.
 - What form that action should take.
31. The Sub-Committee may question all parties and take any advice, to make sure they have information they need to make an informed decision.
32. The Sub-Committee will then deliberate in private to consider whether to take any action in respect of the subject Member and, if so, what action to take.
33. The Sub-Committee may also consider whether it should make any other recommendations to the Council.
34. The Chair will announce the Sub-Committee's decision.
35. A decision letter will be sent to all parties as soon as possible.



Standards Sub-Committee – 20th June, 2022

Report of the Monitoring Officer

Standards Investigation

Purpose of Report

1. To consider and determine the outcome of a standards investigation undertaken in respect of Councillor P Harley in accordance with the Members' Code of Conduct and the local Standards Arrangements relevant at the time.

Recommendation

2. That the Sub-Committee determine the matter in relation to Councillor P Harley based on the investigation referred to in this report.

Background

3. On 13th December, 2021, a formal complaint was received in relation to Councillor P Harley concerning various comments he made to at least one journalist in November, 2021 about Chief Superintendent K Madill (West Midlands Police). The complaint form (attached as Appendix 1) was received from J Jardine, the Chief Executive (West Midlands Police and Crime Commissioner).
4. The complainant alleged that the comments made to the press amounted to a breach of the Members' Code of Conduct. The text of the article that appeared in the local press is attached in Appendix 2. Councillor P Harley also wrote a letter to the West Midlands Police and Crime Commissioner on 22nd November, 2021, which is attached in Appendix 3. The Council's Standards arrangements relevant at the time of the complaint, including the Members' Code of Conduct, are set out in Appendix 4.
5. Following the complaint made concerning the alleged breach of the Code of Conduct, the Monitoring Officer consulted the Independent Person appointed under the provisions of the Localism Act 2011. Having discussed the complaint



with Fr. A Hadley, the Independent Person, it was agreed that the matter merited further formal independent investigation. The matter was referred for independent investigation to Mr D Stilitz QC. Councillor P Harley was informed that this investigation would take place.

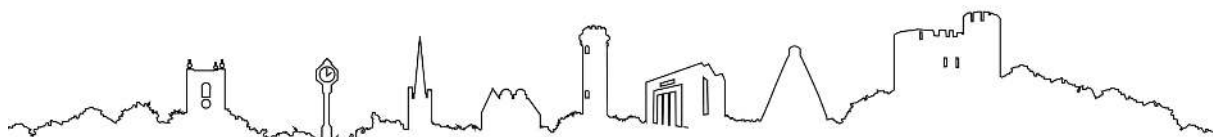
6. Mr Stilitz, having liaised with Councillor P Harley and the complainant, has concluded that there is evidence to show that Councillor P Harley's remarks to the press about Chief Superintendent K Madill's actions were disrespectful, unwarranted and inappropriate and give rise to a potential breach of the Members' Code of Conduct. Mr Stilitz's report on the complaint is set out in Appendix 5.
7. The Monitoring Officer has forwarded Mr Stilitz's report to Councillor P Harley and the complainant. Following consultation with Fr. A Hadley, the Independent Person, it was considered that, as the report finds a potential breach of the Members Code of Conduct, this would merit a referral for a local hearing by the Standards Sub-Committee.
8. The Sub-Committee is requested to determine the appropriate course of action in this case. It is for the Sub-Committee to decide whether there has been a breach of the Code of Conduct. The Sub-Committee is reminded that any action, in the event of a finding of a breach of the Code of Conduct, must be proportionate taking account of the facts and circumstances of each individual case. The Sub-Committee has no power to suspend or disqualify a Member from office. The Standards Arrangements, as contained in the Constitution state that the Sub-Committee may consider the following (although this is not an exhaustive list):-
 - Reporting the findings to Council.
 - Formal letter from the Council or the Chair of the Audit and Standards Committee to the Member in question.
 - Formal censure through a motion.
 - Withdrawal of facilities (eg: ICT).
 - Arrange training for the Member.

Finance

9. The cost of the investigation has been met from within existing Directorate resources.

Law

10. The Members' Code of Conduct and the Standards Arrangements were adopted by the Council under the provisions of the Localism Act 2011 and associated guidance. These documents are set out in Part 6 of the Council's Constitution.



Risk Management

11. There are no implications for the Council’s Risk Management Framework.

Equality Impact

12. The procedure for Standards hearings takes account of and is consistent with the Council’s Equality and Diversity Policies.

Human Resources/Organisational Development

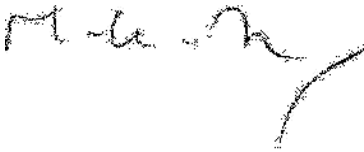
13. There are no issues arising from this report.

Commercial/Procurement

14. There are no issues arising from this report.

Council Priorities and Projects

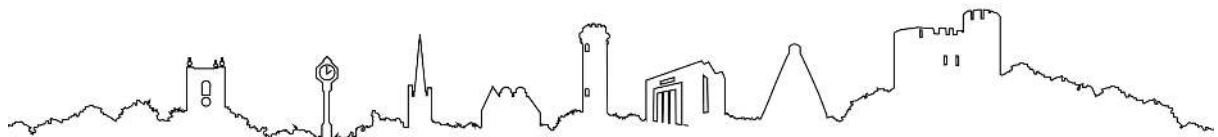
15. There are no implications for the key Council priorities including the Borough Vision, Council Plan and Future Council Programme.



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Mohammed Farooq
Monitoring Officer

Background Papers

Dudley MBC Constitution - Members’ Code of Conduct and Standards Arrangements



Working as One Council in
the historic capital of the Black Country





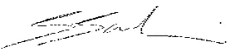
Complaint Form – Code of Conduct for Members

Important: Please read Dudley Council’s arrangements for dealing with standards allegations under the Localism Act 2011 before completing this form. This document includes the Members’ Code of Conduct and is published on our website and available from the Monitoring Officer (contact details are shown below).

To: The Monitoring Officer, Dudley MBC

A. Your details

Please provide us with your name and contact details. The Council will not investigate anonymous complaints, unless there is a clear public interest in doing so.

Title:	Mr
First name:	Jonathan
Last name:	Jardine
Address:	Chief Executive and Monitoring Officer West Midlands Police and Crime Commissioner Lloyd House Birmingham B4 6NQ
Contact telephone:	0121 626 6060
Email address:	jonathan.jardine@westmidlands.police.uk
Signature:	
Date of complaint:	13 December 2021

There is a presumption that a complainant will not be allowed to claim confidentiality unless there are exceptional circumstances.

If you want to keep your name, address or personal contact details confidential, please indicate this in Section C together with the reasons for doing so.

If you complete Section C of this form, we will not immediately disclose your name and other information to the Member against whom you make the complaint, without your prior consent and/or without taking further advice based on the circumstances of the case.

B. Making your complaint

Please provide us with the name of the Member(s) you believe have breached the Council's Code of Conduct:

Title	First name	Last name
Councillor	Patrick	Harley

Please explain below (or on separate sheet(s)) what the Member is alleged to have done that you believe breaches the Code of Conduct. You should identify the specific provision(s) that you feel the Member has breached. If you are complaining about more than one member you should clearly explain what each individual person has done, with dates / witnesses to substantiate the alleged breach.

It is important that you provide all the evidence you wish to have taken into account when we make a decision as to whether to take any action on your complaint or not.

For example:

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

Complaint details:

At approximately 1500 on 22 November 2021 I became aware via West Midlands Police that Councillor Patrick Harley (Kingswinford South) had made the following comments to at least one journalist.

"I will be requesting she [Chief Superintendent Kim Madill] be moved from Dudley borough because I have lost all confidence in her ability to be impartial.

"If she wants to play at being a politician she should give up the uniform and stand for election. There is a protocol in place for dealing with travellers.

"They are not homeless. They are living in caravans on a transit site, which means they can stay for a maximum of 28 days and it's not for her to decide if and when they are moved on.

"I believe her political feelings are affecting her judgment, and in this instance her judgment is flawed.

"She should consider her position."

These comments were subsequently reported in the *Express and Star* on 23 November 2021.

A related letter from Cllr Harley to the Police and Crime Commissioner was received by the OPCC at 1725 on 22 November 2021 - two hours *after* I was notified of Cllr Harley's comments to the journalist. Thus Councillor Harley had already publicised his comments *before* the letter to the Police and Crime Commissioner was sent.

The Dudley MBC Members' Code of Conduct states that councillors should, "Always treat people with respect, including the organisations and public [they] engage with and those [they] work alongside, and not bully any person."

- 1. Do Councillor Harley's comments treat Chief Superintendent Madill with respect? Are Councillor Harley's remarks bullying, in that they seek Chief Superintendent Madill's removal from her current role and demand that she "consider her position"?**

The Dudley MBC protocol for relationships between members and officers states that councillors should, "seek assistance from the Council's Marketing and Communications Section and/or the Chief Executive or relevant Director" before making any media statements.

- 2. What assistance did Councillor Harley seek before making the media statement? I request sight of any advice given. If Councillor Harley failed to seek advice concerning the media statement, I would ask whether this is a breach of the Dudley MBC protocol.**

It also states that members should maintain "reasonable standards of courtesy" and "treat others with respect".

- 3. Do you regard Councillor Harley's comments concerning Chief Superintendent Madill to be courteous and respectful?**

The protocol states that Dudley councillors must "respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice".

- 4. Are Councillor Harley's comments an attempt to coerce a police officer to change their operationally independent professional advice, noting particularly his assertion that Chief Superintendent Madill was letting her "political feelings affect her judgement"?**

The protocol states that, "a member who is unhappy about the actions taken by, or conduct of, an officer should:

- avoid personal attacks on, or abuse of, the officer at all times
- ensure that any criticism is well founded and constructive
- never make a criticism in public, and
- take up the concern with the officer privately"

5. I seek your view on:

- **Are Councillor Harley's statements, "if [Chief Superintendent Madill] wants to play at being a politician she should give up the uniform and stand for election" and "she should consider her position", a personal attack on Chief Superintendent Madill?**
- **Are Councillor Harley's comments abusive towards Chief Superintendent Madill?**
- **Is Councillor Harley's criticism "constructive"?**
- **Was it appropriate for Councillor Harley to make this criticism publicly?**

Councillor Harley made no private contact with the Police and Crime Commissioner to express his concerns regarding Chief Superintendent Madill prior to making his public statement.

- 6. Is it appropriate that Councillor Harley published his criticism of Chief Superintendent Madill without making a private approach to the Police and Crime Commissioner?**

I note your arrangements for dealing with standards allegations under the Localism Act 2011 and await your consideration of this matter.

C. Confidentiality of complainant and the complaint details

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

In the interests of fairness and the rules of natural justice, we believe that Members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against them. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reason to believe that you have justifiable grounds. For example that you believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same).

If you complete this Section, we will not immediately disclose your name and other information without your prior consent. The Monitoring Officer may, however, need to take further advice based on the circumstances of the case before coming to a decision. If your request for confidentiality is not granted, the Monitoring Officer will usually allow you the opportunity of withdrawing your complaint.

However, it is important to understand that, in exceptional circumstances, where the matter complained about is very serious - we may have to proceed with an investigation (or other action) and may have no choice but to disclose your personal and complaint details, because of the allegation(s) made, even if you have expressly asked us not to.

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

N/A

D. Remedy sought

Please refer to the separate document on Dudley Council's arrangements for dealing with standards allegations under the Localism Act 2011. This document sets out examples of the action that might be considered in cases where it is found that a Member has failed to comply with the Code of Conduct.

It is important to note that a Member cannot be suspended or disqualified from office and allowances cannot be withdrawn from Members pending or following an investigation under the Council's Code of Conduct.

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

I would invite Councilor Harley to publicly apologise to Chief Superintendent Madill and withdraw his comments.

Police and Crime Commissioner Simon Foster has suggested that Councillor Harley join his cross-party campaign for fair funding for West Midlands Police. Since 2010, West Midlands Police has lost £175 million, and even after recent and planned increases in officer numbers, we will still be missing 1,000 officers compared to a decade ago.

E. Additional information

Complaints must be submitted in writing. This includes electronic submissions. Frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.

In line with the requirements of the Disability Discrimination Act 1995 and the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language. If you need any support in completing this form, please contact the Monitoring Officer.

The Monitoring Officer will consider your complaint and advise you of the outcome of his initial consideration of the matter and the proposed action (if any).

Please send all completed complaint forms to: Mohammed Farooq, Monitoring Officer, Dudley MBC, The Council House, Dudley, West Midlands DY1 1HF (Tel: 01384 815305)

E-mail: mohammed.farooq@dudley.gov.uk;

Council leader calls for police chief to be moved out of Dudley over travellers row

Published: Nov 23, 2021

A council leader has called for a town's police chief to be reassigned amid a row over her handling of a travellers' encampment.

Dudley Council leader Patrick Harley said he has "lost all confidence" in the borough's police commander Kim Madill and urged her to "consider her position".

He claims she breached protocol by refusing to move on travellers who had stayed at the Budden Road transit site in Coseley for longer than the 28-day period allowed by law.

Chief Superintendent Madill said in making her decision she had ensured the force was "recognising diversity" and "demonstrating our care and compassion for difference".

Conservative councillor Mr Harley said he had written to Police and Crime Commissioner Simon Foster and has called for Ch Supt Madill to be reassigned.

"I will be requesting she be moved from Dudley borough because I have lost all confidence in her ability to be impartial," Mr Harley said.

"If she wants to play at being a politician she should give up the uniform and stand for election. There is a protocol in place for dealing with travellers.

"They are not homeless. They are living in caravans on a transit site, which means they can stay for a maximum of 28 days and it's not for her to decide if and when they are moved on.

"I believe her political feelings are affecting her judgment, and in this instance her judgment is flawed.

"She should consider her position."

In an email to residents explaining her decision, Ch Supt Madill said the travellers had not been involved in any anti-social behaviour or criminality and were "part of our community at the time".

"Our response was about doing the right thing, being lawful and ensuring our actions were proportionate within the scope of the agreed protocol we have in place with the local authority as well as West Midlands Police and national guidance on this," she said.

"There were a number of things that I took into account in my decision making and discussions with the local authority – one of those was about recognising diversity, treating people with dignity and respect and as human beings as well as demonstrating our care and compassion for difference.

"I posed myself the questions – if this was a normal landlord/tenant dispute where a tenant had failed to vacate at the end of their tenancy agreement, would the police get involved?

"How does this impact on trust and confidence and that vital issue of legitimacy that West Midlands Police strive for in relation to all of our communities, not least those that are protected as part of cultural or religious groups, as the gypsy, Roma, traveller community are.

"I was also acutely aware of exposing colleagues and putting them in a situation where they were acting unlawfully."

The Budden Road transit site opened in August 2020 despite opposition from residents.

Assistant Chief Constable for local policing, Rich Baker said: "I fully support Chief Superintendent Madill who has taken a sensitive and proportionate approach to dealing with this matter.

"We will continue to work closely with the council on all matters - including unlawful encampments - for the good of everyone who lives, works or visits Dudley."

Cllr Patrick Harley

The Council House, Priory Road, Dudley, West Midlands, DY1 1HF.
Tel: 0300 555 2345
Email: Cllr.Patrick.Harley@dudleymbc.org.uk
www.dudley.gov.uk

Your Ref:

Our Ref: PH/JDD

Please ask for: Cllr Patrick Harley

Direct Dial: 01384 815218

E-mail: cllr.patrick.harley@dudleymbc.org.uk

Simon Foster
West Midlands Police and Crime Commissioner
Lloyd House,
Colmore Circus Queensway
Birmingham, B4 6NQ

By email to: simon.foster@westmidlands.police.uk

22.11.21.

Dear Commissioner,

Police response to Travellers at Budden Road, Dudley

You may be aware that Dudley Metropolitan Borough Council is currently seeking to evict a group of travellers from the designated traveller *transit* site in Dudley. The group of travellers in question had occupied the site under an agreed 28 day licence which expired on 12th November 2021. They have occupied the site as trespassers since the licence expired. Until this group of travellers leave the site, which they now seem to be occupying on a semi-permanent basis, we are unable to accommodate any other traveller groups, who may visit the borough, at this *transit* site.

I am appalled at the complete lack of support from the Police during the common law eviction process which I describe below.

Council officers engaged in conversations with various police officers in the days prior to 12th November. The intention of the Council was to seek to recover the transit site using common law powers of eviction if the group of travellers did not vacate the site on 12th November. The Council sought the support of the police in doing this. Initial conversations with the police suggested that this would be supported.

Leader of the Council

Cllr Patrick Harley

The Council House, Priory Road, Dudley, West Midlands, DY1 1HF.
Tel: 0300 555 2345
Email: Cllr.Patrick.Harley@dudleymbc.org.uk
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Our Ref: PH/JDD

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Direct Dial: 01384 815218

E-mail: cllr.patrick.harley@dudleymbc.org.uk

The police response thereafter on this issue was led by Chief Superintendent Kim Madill. From that point onwards, all of the preparatory discussions which my officers had undertaken with the police were completely disregarded. It is of course entirely lawful for the Council to seek to remove trespassers under the common law power of eviction. Police officers initially did attend the site when requested due to potentially unlawful conduct by the travellers towards the bailiffs. However the police on site seemingly had orders not to support the Council and the bailiffs at the site in carrying out a lawful eviction.

In the absence of the support of the Police, the Council is now engaged in legal proceedings at the High Court to ensure that this particular group of travellers leave the transit site. However, this is likely to be lengthy and costly process.

There is a protocol in place between the Council and West Midlands Police which deals with traveller related issues. As such, the Council reasonably expects the support and cooperation of the police in dealing with travellers but has not been supported by the police in exercising its lawful powers in this instance. Am I to assume that the protocol only applies when the Borough commander sees fit?

Chief Superintendent Madill has indicated that she did not support the use of common law powers of eviction as she believed that the actions would be in breach of the Human Rights Act 2010 and Article 8 of the European Convention on Human Rights. The Council does not agree with this assessment. The travellers 28 day licence had expired and whilst the Council fully supports the rights of all residents of the borough, the travellers right to a nomadic lifestyle does not include a right to trespass. Indeed, the Police's failure to support the Councils bailiffs in this eviction has perpetuated an unlawful trespass.

I am aware that an email has been sent on 22nd November by Chief Superintendent Madill to community groups concerning this issue. The email does not address the fact that the Council was seeking to exercise a lawful means of evicting trespassers following the expiry of the 28 day licence. Furthermore, it gives the impression that the Council were not justified in seeking to recover possession of the site from trespassers. Communications such as this are not helpful to the situation.

Leader of the Council

Cllr Patrick Harley

The Council House, Priory Road, Dudley, West Midlands, DY1 1HF.
Tel: 0300 555 2345
Email: Cllr.Patrick.Harley@dudleymbc.org.uk
www.dudley.gov.uk

Your Ref:

Our Ref: PH/JDD

Please ask for: Cllr Patrick Harley

Direct Dial: 01384 815218

E-mail: cllr.patrick.harley@dudleymbc.org.uk

The actions proposed by the Council are manifestly lawful. The actions should not be viewed as in breach of Article 8 ECHR as the actions were necessary, reasonable, and proportionate. Action to remove trespassers is necessary so the Council can properly manage the site and make it available for other traveller groups and clearly reasonable given that the site is now unlawfully occupied. It would also appear to be proportionate as adequate warning had been given to the group of travellers at the site and was the only means of recovering the site within a reasonable timeframe. The Council respects the human rights of travellers but does not agree that exercising the common law powers of eviction would have been a breach of the HRA. In this context we also need to be mindful of the human rights of the residents of Dudley who are neighbours of the transit site on Budden Road.

My Cabinet and I have lost all confidence in the current Borough Commander's ability to support the Council in issues relating to travellers. I would be grateful if you could confirm what action will be taken to remedy this and your commitment that the Council will receive the full support of the police in future. Please also confirm that no further communications will be sent to community groups without the agreement of the Council.

Yours sincerely,



Cllr Patrick Harley

Leader of Dudley Council

cc. Sir David Thompson, Chief Constable West Midlands Police
The Rt. Hon Kit Malthouse, Minister for Crime and Policing

Arrangements for Dealing with Standards Allegations under the Localism Act 2011

1. **Context**

The Localism Act 2011 requires the Council to adopt “arrangements” to deal with allegations that a Member or co-opted Member has failed to comply with the local Members’ Code of Conduct. These arrangements set out how any such complaints or allegations will be investigated and dealt with.

The Council has appointed Independent Person(s). An Independent Persons’ views must be sought before a decision is taken on any allegation that the Monitoring Officer has decided shall be investigated. An Independent Persons’ views can be sought by the Council at any other stage, or by a Member against whom an allegation has been made.

2. **The Code of Conduct**

The Council has adopted a Members’ Code of Conduct, which is attached as Annex 1. The document is also available on the website and from the Council on request.

3. **Making a complaint**

It is a requirement of the Localism Act 2011 that any complaint or allegation that a Member has failed to comply with the Council’s code of conduct must be in writing.

If you wish to make a complaint against a Member or co-opted Member, you will need to complete our complaint form, which is available on the website and on request from the Council. You should send the completed form to:-

The Monitoring Officer
Dudley Metropolitan Borough Council
The Council House, Priory Road, Dudley DY1 1HF
E-mail: mohammed.farooq@dudley.gov.uk
Telephone: 01384 815301

The Monitoring Officer has statutory responsibility for maintaining the register of Members’ interests and is responsible for administering the system in respect of complaints about the conduct of Members.

The following points should be noted before you make a complaint:

- You will need to provide us with your name and a contact address or email address, so that the Monitoring Officer can acknowledge receipt of your complaint and keep you informed of its progress.
- The Council will not investigate anonymous complaints, unless there is a clear public interest in doing so.
- There is a presumption that a complainant will not be allowed to claim confidentiality unless exceptional circumstances exist. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent.

4. **Will your complaint be investigated?**

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. He may consult an Independent Person as appropriate. Where the Monitoring Officer has taken a decision, he will inform you of this and the reasons for it.

If the Monitoring Officer requires additional information before coming to a decision, he may ask you to provide such information. He may also request information from the Member against whom your complaint is directed.

The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. Where the Member or the Council makes a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies potential criminal conduct or breach of other regulations by any person, the Monitoring Officer has the power to inform the Police and/or any other regulatory agencies.

5. **How is the investigation conducted?**

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Annex 2.

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

to interview. However the conduct of the investigation is in the total discretion of the Investigating Officer.

The Investigating Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint. He/she will ask the Member to provide his/her explanation of events, and to identify what documents if any he/she needs to see, and whom he/she needs to interview.

In exceptional cases, where it is appropriate to keep your identity confidential, or where disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently. The Monitoring Officer shall keep the issue of confidentiality under review throughout the complaints process.

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 you and to the Member concerned. This will allow you and the Member an opportunity to identify any matter in the draft report that you disagree with, or which you consider requires more consideration.

Having received and taken into account any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and consult an Independent Person as necessary. If he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned, notifying you that he is satisfied that no further action is required, providing you both with a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or is insufficient to determine the complaint, he may ask the Investigating Officer to reconsider his/her report.

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

The Monitoring Officer will review the Investigating Officer's report and either seek local resolution or refer the matter for a local hearing before the Standards Sub-Committee.

8. **Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with an Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution that also helps to ensure higher

standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action. If the Member complies with the suggested resolution, the Monitoring Officer will take no further action.

9. **Local Hearing**

If the Monitoring Officer considers that local resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action (such as giving an apology), then the Monitoring Officer will refer the Investigating Officer's report to the Standards Sub-Committee. The Sub-Committee will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action.

The Council has agreed a procedure for local hearings, which is attached as Annex 3.

The Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chair of the Sub-Committee may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The Member will 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.

The Sub-Committee, with the benefit of advice from an Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Sub-Committee will then consider what action, if any, 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 Member an opportunity to make representations and will consult an Independent Person, but will then decide what action, if any, to take in respect of the matter.

10. **What action can the Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

The Council has given delegated powers to the Standards Sub-Committee to determine the appropriate course of action in respect of any complaints heard.

The action taken by the Sub-Committee, following a finding of a Member breach of the Code of Conduct, must be proportionate taking account of the facts and circumstances of each individual case. The Sub-Committee has no power to suspend or disqualify the Member from office or to withdraw Members' allowances.

The Sub-Committee may consider the following (although this is not an exhaustive list):

- Reporting the findings to Council.
- Recommending to the Member's Group Leader that the Member in question be removed from the Cabinet, any or all Committees or Sub-Committees of the Council or Other Bodies subject to statutory and constitutional requirements.
- Formal letter from the Council or the Chair of the Audit and Standards Committee to the Member in question.
- Formal censure through a motion.
- Withdrawal of facilities (eg: ICT).
- Arrange training for the Member.

11. **What happens at the end of the hearing?**

At the end of the hearing, the Chair will announce the decision to all parties present along with any other actions that the Sub-Committee decides to take.

As soon as reasonably practicable, the Monitoring Officer will send a copy of the decision letter to you and to the Member concerned. The minutes of the Sub-Committee will be placed on the Council's website and submitted to the next convenient ordinary meeting of the Council for information.

12. **Appeals**

There is no right of appeal for you as complainant or for the Member against any of the decisions made by the Monitoring Officer or by the Sub-Committee in accordance with these arrangements.

If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Annex 1: Dudley MBC - Members' Code of Conduct

Annex 2: Procedure for Investigations

Annex 3: Procedure for Local Hearings



Members' Code of Conduct

1. **Application of the Code**

As a Member or Co-opted Member of Dudley Metropolitan Borough Council, I acknowledge that this Code of Conduct applies whenever I am acting in my capacity as a Member, including

- At formal meetings of the Council, the Cabinet, Committees, Sub-Committees and Working Groups.
- When acting as a representative of the Council.
- In taking any decisions as a Cabinet Member or Ward Councillor.
- In discharging functions as a Ward Councillor.
- At briefing meetings with Officers.
- At site visits.
- When corresponding with the Council other than in a private capacity.

2. **General Principles**

As a Member or Co-opted Member of Dudley Metropolitan Borough Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity, I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this Council.

The seven principles of public life

Principle	Revised Description
Preamble	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, Non Departmental Public Bodies, and in the health, education, social and care services. All public office-holders are both servants of the public and

stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness	Holders of public office should act solely in terms of the public interest.
Integrity	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing
Honesty	Holders of public office should be truthful.
Leadership	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

3. **Standards of Conduct**

As a Member of Dudley Metropolitan Borough Council my conduct will address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework,

the interests of the borough or the good governance of the Council in a proper manner.

- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member or Co-opted Member of this Council.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this Council's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other Members to account but restricting access to information when the wider public interest or the law requires it.
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this Council's policies, protocols and procedures, including on the use of the Council's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside, and not bullying any person.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Council.
- Respecting the confidentiality of information received as a Member by:
 - not disclosing confidential information to third parties unless required by law to do so or where there is a clear and over-riding public interest in doing so; and
 - not obstructing third parties' legal rights to access information.

4. **Members' Interests**

The Localism Act 2011 provides for registration and disclosure of interests and in Dudley Metropolitan Borough Council this will be done as follows:

Disclosable Pecuniary Interests

Members must:

- Comply with the statutory requirement to register, disclose and withdraw from participating in respect of any matter in which they have a disclosable pecuniary interest.
- Ensure that the register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change(s) in respect of disclosable pecuniary interests.
- Make a verbal declaration of the existence and nature of any disclosable pecuniary interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.

“Meeting” means any meeting organised by or on behalf of the Council, including:

- Any meeting of the Council, the Cabinet or any Committee, Sub-Committee or Working Group.
- In taking a decision as an individual Ward Member or Cabinet Member.
- Any briefing with officers.
- Any site visit associated with any business of the Council.

Other Interests

In addition to the requirements above, if Members attend a meeting at which any item of business is to be considered and you are aware that you have a “non-disclosable pecuniary interest or a non-pecuniary interest” in that item, you must make a verbal declaration of the existence and nature of the interest at or before the consideration of the item or as soon as the interest becomes apparent.

You have a “non-disclosable pecuniary interest or a non-pecuniary interest” in an item of business where:-

- A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax Payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council’s administrative area; or
- It relates to or is likely to affect any of the interests set out in the form attached to this Code, but in respect of a member of your family (other than a relevant person referred to on the form) or a person with whom you have a close association;

and that interest is not a disclosable pecuniary interest.

It is the responsibility of Members to disclose interests and to withdraw from participating in meetings as and when necessary in accordance with both the requirements of this Code and the Council's Constitution.

Sensitive interests

"Sensitive interests" mean those that contain information, the details of which if disclosed publicly, could lead to a Member or a person connected with a Member, being subjected to violence or intimidation.

Where a Member considers that the details of a disclosable pecuniary interest contains sensitive information, and the Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on the public version of the register, but may include a statement that an interest exists but the details are withheld.

Dispensations

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

Members do not have disclosable pecuniary interests in any business of the Council where that business relates to functions of the Council in respect of-

- housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
- school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full-time education, or are a parent governor of the school, unless it relates particularly to the school which the child attends;
- statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- an allowance, payment or indemnity given to Members;
- any ceremonial honour given to Members; and
- setting the Council Tax or a precept under the Local Government Finance Act 1992 as amended.

Gifts and Hospitality

Members must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 that has been accepted from any person or body other than the Council. The Monitoring Officer will include the notification in the public register.

LOCALISM ACT 2011 - Section 30(3)

The Relevant Authority (Disclosable Pecuniary Interests) Regulations 2012

REGISTER OF MEMBER'S DISCLOSABLE PECUNIARY AND OTHER INTERESTS

NAME

A Member of

PLEASE NOTE that you are required to register the disclosable pecuniary interests of "relevant persons" which includes:

- (a) yourself as the Member or Co-opted Member;
- (b) the interests of the following persons in so far as you are aware of the existence of the interests of the other person(s):
 - your spouse or civil partner;
 - a person with whom you are living as husband and wife
 - a person with whom you are living as if you were civil partners

PLEASE STATE "NONE" WHERE APPROPRIATE

DISCLOSABLE PECUNIARY INTERESTS

- (a) Employment, office, trade, profession or vocation carried on for profit or gain

- (b) Sponsorship – any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred in carrying out duties as a Member, or towards election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992

- (c) Contracts - Description of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council (a) under which goods or services are to be provided or works to be executed; and (b) which has not been fully discharged.

- (d) Land - Any beneficial interest in land, which is within the area of the Council

- (e) Licences - Any licence (alone or jointly with others) to occupy land in the area of the Council

- (f) Any tenancy where (to my knowledge) (a) the landlord is the Council; and (b) the tenant is a body in which the relevant person has a beneficial interest

- (g) Securities - Any beneficial interest in securities of a body where (a) that body (to my knowledge) has a place of business or land in the area of the Council; and (b) either

- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- (ii) 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 relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class

OTHER INTERESTS

- (h) Gifts and Hospitality - Details of the interests of any person from whom a gift or hospitality has been received with an estimated value of at least £100.

- (i) I am a member or in a position of general control or management of the following body/ies one of whose principal purposes include the influence of public opinion or policy (including any Political Party or Trade Union)

Signed

Dated



Investigations Procedure

Standards Allegations under the Localism Act 2011

1. Purpose

The purpose of this procedure is to ensure that investigations are carried out as quickly and thoroughly as possible in line with the principles of fairness, natural justice and other legal issues.

There are many factors that can affect the time it takes to complete an investigation. Most investigations should be carried out, and a report on the investigation completed, within six months of the original complaint being received by the Monitoring Officer. The timescale for holding a hearing to consider the outcome of an investigation should normally be no longer than three months from completion of the investigation. The Monitoring Officer will oversee the process to minimise delays wherever possible.

All decisions will be made under this procedure in accordance with the following principles:

- proportionality (i.e. the action must be proportionate to the desired outcome, including consideration as to cost);
- due consultation and taking of professional advice;
- a presumption in favour of openness;
- clarity of aims and desired outcomes;
- taking account and explaining the options considered and the reasons for the decision taken;
- due regard to the Members' Code of Conduct.

2. Procedure for Code of Conduct Investigations

1. A written complaint is received by the Monitoring Officer.
2. The Monitoring Officer acknowledges receipt and notifies the Member of the details of the complaint.
3. The Monitoring Officer decides whether or not further information is required. Both parties to the complaint will be notified if this is necessary.

4. The Monitoring Officer carries out an initial assessment of the complaint and consults with the Independent Person as necessary.

5. The possible outcomes of the Initial Assessment are:

- **No case to answer** - The Monitoring Officer will notify the Member and the complainant of the outcome of the initial assessment.
- **Informal resolution** – The Monitoring Officer may seek to resolve the complaint informally in consultation with an Independent Person as necessary. The Monitoring Officer will contact the complainant and the Member to discuss the proposal to resolve the complaint informally.

If both parties to the complaint accept informal resolution, the Monitoring Officer will notify them accordingly. If the Complainant refuses a reasonable offer of informal resolution, the Monitoring Officer will take this into account in deciding whether or not the complaint merits formal investigation. The Monitoring Officer may choose to dismiss the complaint.

If the Member agrees to informal resolution, and subsequently fails to comply with any agreed action to informally resolve the matter, the Monitoring Officer may refer the matter to the Standards Sub-Committee.

The Monitoring Officer will advise both parties of the outcome of the agreed informal resolution, thereby concluding the complaint.

- **The Monitoring Officer decides that the complaint requires formal investigation.**

The Monitoring Officer will consult an Independent Person as necessary and advise the complainant and the Member of this decision.

The Monitoring Officer will appoint an Investigating Officer – who may be another senior officer of the Council, a senior officer from another Authority, or an external investigator.

The Investigator will advise the Complainant and the Member of the scope of the investigation, including proposed timescales, the witnesses to be interviewed and the documents required. The Investigator has sole discretion as to how to conduct the investigation and conclude the investigation report.

At the conclusion of the investigation, the Investigation Officer will produce a draft report, to be forwarded to the complainant, the Member and the Monitoring Officer.

The Complainant and the Member will have an opportunity to comment on the draft report, and identify aspects of the report they disagree with. However the Investigator has sole discretion as to whether or not to amend or alter the report as a result of any comments made. The Investigating Officer will forward the final report to the Monitoring Officer with any amendments following his/her consideration of any comments received.

The Monitoring Officer will review the Investigating Officer's report and will decide whether or not the report is sufficient. If the report is deemed to be insufficient, the Monitoring Officer will ask the Investigating Officer to reconsider the report.

If the report is sufficient, the Monitoring Officer will send a final copy of the report to the complainant and the Member, and indicate the course of action that he will take in relation to the complaint.

The courses of action will be as follows:

- **The report finds no breach of the Members' Code of Conduct** – the Monitoring Officer will advise the complainant and the Member that the matter is concluded.
- **The report finds a breach or potential breach of the Members' Code of Conduct** – the Monitoring Officer will write to the parties confirming this and propose one of the two following options:
 - (i) Informal Resolution following consultation with an Independent Person. In this event the same procedure as set out above will apply for informal resolution.
 - (ii) Referral for a local hearing by the Standards Sub-Committee.



Procedure for Standards Sub-Committee Meetings

1. Interpretation

'Subject member' means the Member of the Council who is the subject of the allegation being considered by the Sub-Committee, unless stated otherwise. It also includes the Member's nominated representative.

'Investigator' means the Monitoring Officer or his nominated representative.

'Independent Person' means a person appointed to undertake this role by the Council pursuant to the provisions of the Localism Act 2011.

2. Representation

The subject Member may be represented or accompanied during the meeting by a person of their choice.

3. Advice

The Sub-Committee may take advice, in private if necessary, from officers at any time during the hearing or while they are considering the outcome. The substance of any advice given to the Sub-Committee should be shared with the subject Member and the investigator if they are present.

4. Independent Person

The Independent Person involved in the case shall be entitled to attend the meeting to give advice and views to the Sub-Committee at any stage of this procedure.

5. Setting the scene

After everyone has been formally introduced, the Chair should explain how the Sub-Committee is going to run the hearing.

6. Exclusion of the Public and Press

The Sub-Committee will consider whether the meeting should be considered in public or private session under the provisions of the Local Government Act 1972.

7. **Preliminary Procedural Issues**

The Sub-Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

8. **Making findings of fact**

After dealing with any preliminary issues, the Sub-Committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.

If there is no disagreement about the facts, the Sub-Committee can move onto the next stage of the hearing.

If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub-Committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The Sub-Committee may give the subject Member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The subject Member should then have the opportunity to make representations to support their version of the facts and, with the Sub-Committee's permission, to call any necessary witnesses to give evidence.

At any time, the Sub-Committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the Member.

If the subject Member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-Committee will consider whether it would be in the public interest to continue in their absence.

After considering the Member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:

- continue with the hearing, relying on the information in the investigator's report;
- allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary;
- postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already.

The Sub-Committee will usually adjourn to consider the representations and evidence in private.

The Chair will announce the Sub-Committee's findings of fact.

9. **Did the subject Member fail to follow the Code of Conduct?**

The Sub-Committee then needs to consider whether, based on the facts it has found, the subject Member has failed to follow the Members' Code of Conduct.

The subject Member should be invited to give relevant reasons why the Sub-Committee should decide that he/she have not failed to follow the Code.

The Sub-Committee should then consider any verbal or written representations from the investigator.

The Sub-Committee may, at any time, question anyone involved on any point they raise on their representations.

The subject Member should be invited to make any final relevant points.

The Sub-Committee will then adjourn to consider the representations.

The Chair will announce the Sub-Committee's decision as to whether the subject Member has failed to follow the Code.

10. **If the subject Member has not failed to follow the Code of Conduct**

If the Sub-Committee decides that the subject Member has not failed to follow the Code, the Sub-Committee can move on to consider whether it should make any recommendations to the Council.

11. **If the subject Member has failed to follow the Code of Conduct**

If the Sub-Committee decides that the subject Member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject Member as to:-

- Whether the Sub-Committee should take any action.
- What form that action should take.

The Sub-Committee may question all parties and take any advice, to make sure they have the information they need in order to make an informed decision.

The Sub-Committee will then deliberate in private to consider whether to take any action in respect of the subject Member and, if so, what action to take.

The Sub-Committee may also consider whether it should make any other recommendations to the Council.

The Chair will announce the Sub-Committee's decision.

12. **The written decision**

The Sub-Committee will announce its decision on the day. The Monitoring Officer will arrange for a decision letter to be sent to all parties as soon as possible after the meeting to confirm the decision.

DUDLEY METROPOLITAN BOROUGH COUNCIL

CODE OF CONDUCT FOR MEMBERS

REPORT ON COMPLAINT AGAINST
COUNCILLOR PATRICK HARLEY

Introduction

1. I have been appointed by Mr Mohammed Farooq, the Monitoring Officer of Dudley Metropolitan Borough Council (“**the Council**”), as Investigating Officer for the purposes of a complaint made against Councillor Patrick Harley, the Leader of the Council, by Mr Jonathan Jardine, the Chief Executive and Monitoring Office for the West Midlands Police and Crime Commissioner.
2. On 13 December 2021 Mr Jardine made a complaint under the Council’s arrangements for dealing with allegations that a Member has failed to comply with the local Members’ Code of Conduct (“**the Complaint**”). The relevant arrangements were made by the Council under the Localism Act 2011.
3. In the Complaint, Mr Jardine alleges that Councillor Harley spoke inappropriately to one or more journalists on 22 November 2021, in comments that were reported in the local press.
4. The comments in question related to the decision of Chief Superintendent Kim Madill of the West Midlands Police to exercise a discretion not to evict a group of travellers from a transit site at Budden Road, Coseley (“**the Site**”), notwithstanding that they had stayed there for longer than the 28 days that is normally permitted. Chief Superintendent Madill is the Borough Commander for Dudley.
5. Mr Jardine alleges that Councillor Harley said in his comments to the press:

“I will be requesting she [Chief Superintendent Madill] be moved from the Dudley Borough because I have lost all confidence in her ability to be impartial.

If she wants to play at being a politician she should give up the uniform and stand for election. There is a protocol in place for dealing with travellers.

They are not homeless. They are living in caravans on a transit site, which means they can stay for a maximum of 28 days and it's not for her to decide if and when they are moved on.

I believe her political feelings are affecting her judgment, and in this instance her judgment is flawed.

She should consider her position.”

6. Later on 22 November 2021, Councillor Harley wrote to the West Midlands Police and Crime Commissioner (“**the Commissioner**”) to complain about Chief Superintendent Madill’s decision.
7. In Summary, Mr Jardine’s complaints about Councillor Harley’s comments are as follows:
 - 7.1. In making the comments, Councillor Harley failed to treat Chief Superintendent Madill with respect and/or bullied her, in particular by seeking her removal from her current role and stating that she should “consider her position”.
 - 7.2. Councillor Harley failed to adhere to the Council’s Protocol on relationships between members and officers (“**the Protocol**”), in particular by failing to seek assistance from the Council’s Marketing and Communications Section and/or the Chief Executive or relevant Director before making his statements to the media.
 - 7.3. Councillor Harley failed to adhere to the requirement in the Protocol that members should maintain “reasonable standards of courtesy” and “treat others with respect”.
 - 7.4. Councillor Harley failed to adhere to the requirement in the Protocol that members must “respect the impartiality of officers and do nothing to compromise it” by criticising Chief Superintendent Madill’s decision, in particular by alleging that she allowed “her political feelings” to affect her judgment.
 - 7.5. Councillor Harley failed to adhere to the requirement in the Protocol that “a member who is unhappy about the actions taken by ... an officer should avoid personal attacks ...ensure the criticism is well founded and constructive, never make a criticism in public and take up the concern with the officer privately”.

- 7.6. Councillor Harley inappropriately failed to contact the Police and Crime Commissioner privately because making public criticisms of Chief Superintendent Madill.
8. By way of remedy, Mr Jardine has suggested that Councillor Harley should publicly apologise to Chief Superintendent Madill and withdraw his comments.

Mr Jardine's complaint

9. I interviewed Mr Jardine on 4 March 2022 and invited him to explain the nature of his complaint in more detail.
10. Mr Jardine is Chief Executive of the West Midlands Police and Crime Commissioner (“**the Commissioner**”). The Commissioner is a separate body from West Midlands Police, but responsible for setting the strategic direction of the force, holding them to account, setting the budget and performing duties relating to the appointment and dismissal of the Chief Constable. Mr Jardine reports to Simon Foster, the elected Commissioner. He is also Monitoring Officer and Head of Paid Service. He has held this role since 2015.
11. Mr Jardine made clear that his complaint was not about the issue of the use of the transit site. He recognised that it is perfectly legitimate for Councillor Harley to seek information about the running of the site. It is a highly contentious issue. The Commissioner and West Midlands Police work with partners to try and manage unauthorised encampments as they arise and the Site is one element of that.
12. Mr Jardine's concern is solely as to the manner in which Councillor Harley expressed himself in comments made to the media about the issue, as set out in his complaint. Councillor Harley had concerns about the management of a particular group of travellers, who stayed beyond the standard 28 days. Mr Jardine's concern was as to the timing, manner, personal nature and tone of the comments made to media.
13. Mr Jardine explained that the Commissioner was asked for comment on Councillor Harley's remarks on the afternoon of 22 November 2021 at 3pm by a journalist from the Express and Star.

14. Mr Jardine noted that, after Councillor Harley had spoken to the press, he wrote later that day, 22 November 2021, to Mr Foster, the Commissioner. In that letter, Councillor Harley was highly critical of the lack of police support, as he perceived it, in relation to the Site. However, his tone was rather different from that in his remarks to the press. He stated:

“The police response thereafter on this issue was led by Chief Superintendent Kim Madill. From that point onwards, all of the preparatory discussions which my officers had undertaken with the police were completely disregarded ... the police on site seemingly had orders not to support the Council and the bailiffs at the site in carrying out a lawful eviction ...

Chief Superintendent Madill has indicated that she did not support the use of common law powers of eviction as she believed that the actions would be in breach of the Human Rights Act ... The Council does not agree with this assessment ...

My Cabinet and I have lost all confidence in the current Borough Commander’s ability to support the Council in issues relating to travellers. I would be grateful if you could confirm what action will be taken to remedy this and your commitment that the Council will receive the full support of the police in future.”

15. Whilst Councillor Harley stated clearly in this letter that the Council disagreed with Chief Superintendent Madill’s assessment of whether supporting the eviction would breach the travellers’ Convention rights, he stopped short of alleging that her decision was politically motivated or took into account irrelevant considerations. Rather, the matter was characterised as a disagreement on a question of law and/or fact. The letter did not (at least explicitly) request that Chief Superintendent Madill be moved from the Borough, did not accuse her of playing at being a politician, did not suggest that she should seek election, did not accuse her of allowing her political feelings to affect her judgment and did not suggest that she should consider her position.

16. The letter was copied to Sir David Thompson, Chief Constable of West Midlands Police, and Kit Malthouse, Minister for Crime and Policing. It was not copied to Chief Superintendent Madill herself.

17. Mr Jardine explained that his concern was that, before the letter was sent, Councillor Harley had publicly expressed his concerns, and that the manner in which he had expressed himself was not consistent with the way in which an elected councillor should speak about a public servant in a public forum.

18. Mr Jardine accepted that the Protocol in relation to members and officers does not apply directly in this context, as Chief Superintendent Madill is not an officer of the Council, but he felt that it should provide a good benchmark for what is considered to be appropriate behaviour towards officers of other, partner organisations.
19. As to the substance of the remarks, Mr Jardine considered that referring to the Chief Superintendent wanting to play at being a politician, when the issue was concerned with the operational decision of a police officer, was inappropriate. It was in substance making an allegation that she was acting on the basis of personal, political conviction, rather than attempting to comply with the law, which is a very serious allegation to make against a police officer. The implication was that she was using her powers as a police officer to pursue her own personal agenda, and to oppose the political agenda of Councillor Harley, rather than merely maintaining the law, which should be an operationally independent matter. The suggestion was that she was opposing Councillor Harley politically, rather than trying to do her job. The clear implication was that her motivations were not related to her duties as a police officer, but were motivated by some ideological cause.
20. In addition, Mr Jardine considered that the tone of the statements, in the context of Chief Superintendent Madill being the Borough Commander, and therefore the leader of the neighbourhood policing unit for Dudley, was an attack on her personally when the decisions related to the management of that site are the product of the decisions of a number of officers, and ultimately of the West Midlands Police. This was a West Midlands Police approach, and it was wrong to pick on one individual and single her out for criticism in that way. Chief Superintendent Madill would have been acting on advice, and responsibility ultimately fell on the Chief Constable in respect of operational matters. Councillor Harley could have said that he had lost confidence in West Midlands Police, but instead he singled out one individual.
21. Mr Jardine stated that, if Chief Superintendent Madill had misconducted herself, she could have been subject to a process that would ultimately be the responsibility of the Chief Constable. If there was any complaint of misconduct, it should have been made in that way. But, in reality, Councillor Harley was complaining about a decision which the force had taken. If it had been dealt with as a matter of misconduct, Chief Superintendent Madill would have had a right of reply, which as things transpired she did not have, given the way

the matter had been raised in public. Councillor Harley could very easily have raised a conduct concern through the usual channels.

22. In suggesting that Chief Superintendent Madill should consider her position, Mr Jardine felt that Councillor Harley was saying that she should leave her position as Borough Commander. He also interpreted Councillor Harley as saying that she should be moved away from Dudley altogether. Tellingly, on Mr Jardine's analysis, Councillor Harley did not say either of these things (at least explicitly) in his letter. He simply said that the Council had lost confidence in her ability to support it.
23. Mr Jardine explained that his complaint was not based on any specific harm which may have been caused to Chief Superintendent Madill. His concerns were about the comments that were made, which were necessarily public complaints calling into question her professionalism.
24. In terms of remedy, the core of it was seeking an apology. There should be reflection on the part of Councillor Harley that this is not how we should do business in the public sector.
25. The reference in the complaint to suggesting that Councillor Harley should signal support to the West Midlands Police in relation to funding was based on that being a way of him signalling his support for local policing, as opposed to calling into question the political motivation of officers who are trying their best to do their job. However, Mr Jardine accepted that this was not the primary focus of his complaint.

Councillor Harley's response

26. I interviewed Councillor Harley on 11 March 2022 to seek his response to Mr Jardine's complaint. Councillor Harley has been the Leader of Dudley Council since May 2017. He was previously a Councillor from 2004.
27. Councillor Harley accepted that he made the comments and was not misquoted by the Express & Star. The gist of the comments, he accepted, was certainly correct.

28. He further accepted that the comments were made to the press before the Commissioner received the Council's letter.
29. By way of background, Councillor Harley stated that he had had several communications with both the Chief Constable and the Commissioner previously, but everything had fallen on deaf ears. Previously, the police had been extremely supportive. There was a protocol in place for dealing with the Site, which had been adhered to. However, in discussions with Chief Superintendent Madill, she had been reluctant to accept the terms of the Protocol.
30. Councillor Harley stated that the Council did not accept that human rights considerations justified a departure from the Protocol.
31. Councillor Harley stated that, when a group of travellers overstay in this way, the local press are well aware of when people should be moved on, and if they are not, the local people are, and therefore the Council have to give a response. He explained that local people will get straight on to the local politicians about a contentious issue such as this. The members of the Council are elected and responsible to local residents. On an issue like this, Councillor Harley felt that he had to comment because it is such a controversial political issue. He emphasised that the Council's general relations with the travelling community are good, in part because of the Site. He felt that Chief Superintendent Madill's actions were damaging to relations within the travelling community, because while this particular family was on the Site, other travellers could not gain access to the Site.
32. Councillor Harley was unclear as to what he had wanted to happen. He claimed that he did not want Chief Superintendent Madill to be moved. However, he accepted that saying that the Council did not have confidence in her was saying the same thing in a round-about fashion. He considered that asking for someone to be moved from their job would possibly be a step beyond that. But he went on to assert that, in circumstances where the Council had lost confidence in her, the situation was beyond repair.
33. Having said that, Councillor Harley accepted that since the letter had been written the West Midlands Police had been more helpful than ever. Indeed, Councillor Harley stated that his confidence in Chief Superintendent Madill had been restored.

34. Councillor Harley accepted that there is a distinction to be made between a difference of opinion on a matter of law and alleging that a public official has acted for an improper motive. He further accepted that he had alleged in his comments that Chief Superintendent Madill was acting for an improper motive, and that he had called into question her professional integrity, but he said he stood by that comment. In previous conversations with Chief Superintendent Madill and her team (not rank and file police but travellers experts), it was clear to him that she did not agree with the protocol agreed by her predecessor. She was in his view acting for an improper motive because there was no reason to take this different stance on human rights grounds. Councillor Harley did not initially accept that whether an Article 8 issue arose would depend on the particular facts. This was not a case involving a traveller who was heavily pregnant, or about to give birth, or anything like that. He could think of examples where the Council would extend a stay at the Site on human rights grounds. Ultimately, he accepted that this would depend on the facts. But, in his view, there were no facts in this case to justify a different approach.
35. Councillor Harley stood by his comments that Chief Superintendent Madill's actions were inappropriately politically motivated. However, he could provide no explanation as to why he did not make that allegation in his letter, beyond stating that the letter was written rather quickly.
36. Councillor Harley confirmed that when he said that Chief Superintendent Madill should consider her position, he meant that she should resign or at least move on to another area. He stated that he considered it appropriate publicly to seek her resignation, because he felt that she was not listening to the Council. In his view, one cannot have a senior police officer deciding to pick and choose which agreements to adhere to. He also pointed out that his comments to the press were off the cuff and reactive in nature.
37. On the contrast between the tone of the comments to the press and the letter, Councillor Harley stated that he believed that he was calling for Chief Superintendent Madill's resignation in the letter. Saying that the Council had lost confidence in her was, in his view, a "more workmanlike" manner of calling for her resignation.
38. Councillor Harley concluded by saying that had no regrets about the way he expressed himself in his comments. He accepted that they were strong comments, but he felt that the consequence was that the Council now has full cooperation for the police.

39. On the tone of the comments, Councillor Harley stated that he believed that the manner in which he had voiced his opinions was respectful. The context was that he felt that the Council were clearly being badly let down by their Commander. He felt under an obligation to speak up for local people. He also felt that senior police officers need to be able to manage the political aspect of their role.
40. Councillor Harley asserted that there had been a number of telephone calls and emails between the Council and the police regarding this issue in the days before his comments to the press were made. I asked him to provide copies of any such emails. However, he was ultimately unable to do so.

Findings

41. My finding is that, in making the remarks he did to the press, Councillor Harley engaged in conduct which gave rise to a breach of the Council's Code of Conduct for Members.
42. Specifically, I find that he breached the following provisions of the Standards of Conduct:
- 42.1. "Always treating people with respect, including the organisations and public I engage with and those I work alongside, and not bullying any person."
- 42.2. "Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within the Council."
43. On a fair reading, Councillor Harley's admitted statements to the press made the following allegations against Chief Superintendent Madill in a public forum:
- 43.1. That she lacked impartiality in the performance of her role;
- 43.2. That she was using her position as a senior police officer to pursue her own political agenda;
- 43.3. That she had acted unprofessionally and without integrity;
- 43.4. That she was incapable of carrying out her duties properly and should resign.

44. These are serious allegations to make against a fellow public servant, and in particular against a serving police officer. Public confidence in the police requires that members of the public and other organisations should be able to trust the police to act professionally and impartially.
45. Whatever the merits of Councillor Harley's concerns, it was inappropriate for him to air them in public in this manner and taking this tone. It would have been open to him to make a formal or informal complaint to the Chief Constable or to the Commissioner. It was open to him to criticise, if he wished in robust and vehement terms, the decision taken. To launch a personal attack on Chief Superintendent Madill's integrity through these off the cuff remarks to the press was, however, in my view inappropriate.
46. I am struck by the contrast in tone between the comments Councillor Harley made to the press and the letter he sent subsequently to the Commissioner. That letter was strongly worded and made it clear that Councillor Harley fundamentally disagreed with Chief Superintendent Madill's decision and the police's actions in relation to the Site.
47. However, on the question of whether Article 8 of the Convention justified a different approach, in his letter Councillor Harley fairly described Chief Superintendent Madill as having reached an assessment with which the Council did not agree. In other words, the matter was characterised as a genuine difference of opinion. Councillor Harley did go on to say that he "had lost all confidence in the current Borough Commander's ability to support the Council in issues relating to travellers". But he did not seek to impugn her integrity or professionalism. He did not allege that her actions were politically motivated. He did not call on her to resign. And he did not even expressly ask that she be moved.
48. Had Councillor Harley expressed himself to the press in a similar manner to that in which he expressed himself in his letter, in my view there would have been no grounds for complaining that he had breached the Code of Conduct. However, the remarks made to the press went considerably further than the comments in the letter, and amounted to an unwarranted personal attack on Chief Superintendent Madill's integrity.
49. It follows, in my assessment, that Councillor Harley did not treat Chief Superintendent Madill with respect. Nor did he provide appropriate leadership by acting in accordance with the Council's standards of conduct in championing the interests of the community.

50. For the avoidance of doubt, I do not consider that Councillor Harley's remarks were sufficiently extreme or concerted to amount to bullying. My finding is thus confined to disrespectful treatment and a failure to show appropriate leadership.
51. In reaching this view, I should make it clear that I give due weight to each of the following matters: (a) Councillor Harley's remarks were made in the context of a contentious local issue in respect of which there was and remains substantial public interest and on which the Council is under pressure to take action; (b) his comments to the press were off the cuff and reactive; (c) he genuinely and strongly felt that Chief Superintendent Madill's actions were unjustified; and (d) it is plainly important that local politicians are able to exercise their right of freedom of expression under Article 10 of the European Convention by speaking out on matters of local importance, if necessary in robust terms.
52. Nonetheless, on balance I consider that Councillor Harley's remarks to the press were inappropriate and disrespectful, and as such gave rise to a breach of the Council's Code of Conduct.
53. In accordance with the Council's arrangements, I sent a copy of this Report in draft to Mr Jardine and to Councillor Harley, seeking their comments.
54. Mr Jardine expressed himself to be content with the Report.
55. In his response, Councillor expressed his disagreement with my findings. He noted that Chief Superintendent Madill had since been moved away from the area and indicated that West Midlands Police's support had recently been impressive, thus vindicating his stance. He reiterated that he regarded Chief Superintendent Madill as belonging to "the woke brigade" who "want to tear down the very fabric of our society" and "support any cause or individuals who wish to harm our way of life whilst doing the utmost to assist others who seem hellbent on trespassing and causing distress to law abiding citizens".
56. Nothing in Councillor Harley's response leads me to revise my findings. Indeed, his response adopts a similarly disrespectful and inappropriate tone to his original remarks, and again unjustifiably seeks to impugn Chief Superintendent Madill's integrity and professionalism.

Conclusion

57. In summary, I conclude that Councillor Harley's remarks to the press about Chief Superintendent Madill's actions were disrespectful, unwarranted and inappropriate, and gave rise to a breach of the Code of Conduct to the extent set out above.

DANIEL STILITZ QC

19 May 2022