

ASHFORD BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MAY 2005

REPORT OF HEAD OF LEGAL SERVICES & MONITORING OFFICER

LOCAL INVESTIGATION OF COMPLAINTS OF MISCONDUCT

A. Introduction and Purpose of Report

1. In March 2004 I reported to this Committee on the Local Determination Regulations which enable Ethical Standards Offices (ESOs) of the Standards Board for England (SBE) to refer complaints of misconduct by borough or parish councillors to local authority Standards Committees for local determination. At that time the regulations covered only the case where ESOs had completed an investigation and referred the matter to the local authority to hold a hearing. The Committee adopted a pre-hearing procedure to be followed by the Monitoring Officer in the event of such referrals and also a Local Determination Hearing Procedure. The Committee resolved to hear the first three referred cases as a full Committee (in order to develop expertise) and thereafter hear matters through "Borough matter" and "Parish matter" sub-committees of 5 members. To date there have been no referrals for local determination under the original regulations. A full day training event was held for all members on 24 March 2004 but the constitution of the Committee may change significantly after the annual meeting of the Council and further or refresher training would be desirable before any local hearings are actually held. I will examine the feasibility of this as soon as practicable.
2. New regulations now enable the Standards Board for England through its Ethical Standards Officers to refer complaints of Councillor misconduct to the Monitoring Officer of a local authority for local investigation, instead of investigation by the Standards Board's Ethical Standards Officers, before the complaint is determined by the Authority's Standards Committee (or Sub-Committee). The Standards Board has published guidance as to how local authorities should arrange for the conduct of such local investigations, and the first cases will now start to be referred to individual authorities for local investigation and determination under these regulations. The regulations also make important amendments to the powers of Standards Committees, even in cases which have been investigated by an Ethical Standards Officer.
3. This is a further step in giving local authority Standards Committees responsibility for complaints of Councillor misconduct, and will assist the Standards Board in ensuring that the less serious complaints are dealt with promptly.
4. This report sets out the implications of the new regulations and recommends a procedure for such local investigations and an amended procedure for local

determination hearings for adoption by the Standards Committee which would apply in all cases.

B. Pre-Investigation

1. When the SBE receives a complaint, it has to decide first whether the complaint appears to relate to a possible failure to comply with the Code of Conduct, and then whether it merits investigation. The SBE should now notify the Monitoring Officer of the complaint at this early stage and ask for background information, in order to ensure that it only refers for investigation those complaints which really merit such investigation. Whilst there is no duty on the Monitoring Officer to seek to resolve the complaint at this stage, and many complaints will not be capable of such local resolution, this may enable the Monitoring Officer in appropriate cases to explore whether there is anything which the Councillor and/or the authority could do to resolve the complaint and thereby avoid the time and cost of a formal investigation. Such local resolution would be effected by securing the agreement of the complainant, or otherwise persuading the SBE, that the complaint be not investigated or that no action is required on it.

C. Local Investigations

Receipt of the Complaint

1. Under the new regulations, where the case is referred by the SBE for investigation, it goes to an ESO who decides whether to allocate it to one of the Board's own investigators or, now, to refer it to the authority's Monitoring Officer. The ESO will not refer matters for local investigation where the serious nature of the matter means that it is likely to require a sanction in excess of the Standards Committee's maximum sanction of 3 months' suspension. Other criteria highlighted by the Board for local investigation include:
 - the allegation is of an entirely local nature and does not raise matters of principle;
 - the initial investigation by an ethical standards officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

The ESO is less likely to refer cases if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.

2. In referring a complaint to the Monitoring Officer, the ESO will send a copy of the original complaint letter and of any other relevant information which he/she possesses. In exceptional cases, such as a single letter containing a number of different complaints, the ESO may edit the complaint letter and merely pass on those parts relevant to the particular complaint.

3. On receipt of the referred complaint, the Monitoring Officer will notify the Councillor, the complainant and the Parish or Town Clerk (if it is a Parish or Town Council matter) and will arrange for the investigation. Although it may be possible at this stage to give limited confidential information to members of the Standards Committee regarding the referral, the better practice in my view is to resist doing so in order to ensure that absolute impartiality of the Committee is maintained from the outset.

D. Appointment of the Investigating Officer

1. The Monitoring Officer remains the chief policy adviser to the Standards Committee and the primary contact for Councillors who have enquiries on standards issues, such as whether they have a personal or prejudicial interest in a particular matter. That role will usually be incompatible with personally undertaking the Investigating Officer role, which includes presenting the investigation report at any local standards hearing, so the Monitoring Officer will usually need to appoint another person to undertake the investigation upon terms which he considers appropriate. In appropriate cases, the Monitoring Officer may be able to appoint another officer of the authority to undertake the investigation, but in sensitive cases it may be appropriate to appoint an outside investigator, either borrowing from another authority for the purpose or appointing an experienced commercial investigator for the purpose. Some provision has been made in the Council's budget for 2005/06 for the potential costs of such appointments.
2. The Investigating Officer will be required to produce a full report, setting out his conclusions as to the facts of the matter and whether the Councillor did or did not fail to comply with the Code of Conduct. One area of particular concern to any Investigating Officer will be the risk of a defamation claim from the Councillor or any other person mentioned in the report. (An Investigating Officer will be entitled to the defence of "qualified privilege" in the preparation of his/her report unless the claimant can demonstrate that the Investigating Officer was motivated by malice. However, the legal costs of fighting defamation action can be very considerable). The likelihood of such a claim is low, but if each Investigating Officer had to take out their own legal costs insurance it would push up their fees considerably. I have therefore recommended that the Council grant an indemnity against the legal costs of defending any such claim and any damages which might be awarded, and if agreed by this Committee, I will arrange for the Council to insure this risk.
3. The position of the Monitoring Officer as prime point of advice to individual members on standards issues may also give rise to conflicts of interest which would rule the Monitoring Officer out from acting as the legal adviser to the Standards Committee for individual case hearings (although this will not necessarily be the case for all hearings). Accordingly, the Monitoring Officer may need to arrange for another legal officer to act as the legal adviser to the Standards Committee for individual case hearings. On occasion, this may require borrowing such an adviser from another local authority or instructing a private practice solicitor for this purpose.

Recommendation One:

That the Council provide an indemnity to Investigating Officers against any claims for defamation, and that the Council insure such risk.

E. Procedure for Local Investigations

1. The Committee needs to approve a procedure for local investigations, which will form part of the instructions to the Investigating Officer and will inform both the Councillor and the complainant as to how the matter will be dealt with. I attach as Appendix A a recommended procedure for local investigation which complies with the regulations and guidance from the SBE. Under this procedure, the investigation would run as follows:
 - a. The Monitoring Officer will advise the Councillor, the Complainant and any Parish or Town Council of receipt of the complaint, of the identity of the Investigating Officer and of the Investigation Procedure. He/she will also provide the Councillor with a copy of the complaint;
 - b. The Investigating Officer will contact the Councillor and the complainant for their comments and to identify any persons who he/she should interview and any evidence which he/she should examine;
 - c. The Investigating Officer will conduct such interviews as appear to him/her to be necessary, including more detailed interviews with the Councillor if required;
 - d. The Investigating Officer will send his full draft report to the Councillor and the complainant and the Monitoring Officer, and at least extracts to any person who has provided evidence which he/she has relied upon in writing the report, and give them 10 days for them to send him any comments or suggested corrections on the draft report;
 - e. The Investigating Officer will produce a final report, taking account of any such comments and suggested corrections and send it to the Monitoring Officer;
 - f. Where the Investigating Officer concludes that there has not been a failure to comply with the Code of Conduct, he/she will report to the Standards Committee. The Standards Committee will consider the report and any representations from the Councillor and will either:
 - i. accept the Investigating Officer's conclusions and take no further action, or
 - ii. resolve that the matter should be considered at a formal hearing. [Note that this is not a finding of fault on the part of the Councillor but merely a conclusion that they are not prepared at that stage to accept the Investigating Officer's conclusions and that the matter merits examination at a formal hearing.]

- g. Where the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct, the matter must go to a formal hearing without such a preliminary step.
 - h. If the matter goes to a formal hearing, that hearing would be conducted in exactly the same manner as a formal hearing on an ESO's report except that the Investigating Officer takes the place of the ESO in presenting the report and introducing any relevant evidence and witnesses.
2. Under this procedure, in order to prevent any prejudice to the Standards Committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of the investigation, until they receive the agenda and papers, including the Investigating Officer's report, for the meeting which is to consider that report.

Recommendation Two:

That the Committee approve the Procedure for Local Investigations set out at Appendix A.

F. Additional Failures to Comply with the Code of Conduct

- 1. Where an ESO is conducting an investigation and identifies evidence of additional failures to comply with the Code of Conduct, either by the original Councillor or by other Councillors, he/she can add those matters into his/her investigation and report. The regulations provide that where a matter is referred for local investigation, the Investigating Officer's remit is limited to the conduct which comprises the subject matter of the original complaint. Accordingly, where he/she identifies additional matters outside the scope of the original complaint, he/she will not be able to add them into his/her investigation. However, his/her remit is to conclude whether the conduct constitutes a failure to comply with the Code of Conduct, and he/she is therefore entitled to conclude that the conduct constitutes a failure to comply with paragraphs of the Code of Conduct other than those specifically cited by the complainant. By way of example, if the complaint were one of rudeness by one Councillor to another, the Investigating Officer would not be entitled to include in his investigation any other instances of such rudeness, but would be entitled to conclude that the conduct complained of constituted a failure to treat with respect even if the original complaint only suggested that it was conduct likely to bring the authority into disrepute.

G. Reference back to the Standards Board by the Monitoring Officer

- 1. Matters will be referred for local investigation at an early stage. It is therefore possible that, during the course of the investigation, it becomes apparent that the conduct complained of is more serious and that a Case Tribunal, with powers to impose sanctions of up to one year's suspension or up to five year's

disqualification, would be the appropriate forum for any hearing of the matter, rather than a Standards Committee with a limited power to suspend the Councillor for up to 3 months. The regulations (and the recommended investigation procedure) therefore provide that, at any time during the course of an investigation, the Investigating Officer can report to the Monitoring Officer who can request the ESO to resume responsibility for the investigation. The final decision to resume such responsibility rests with the ESO.

H. Local Hearings

1. The regulations also make certain changes in respect of the conduct of local hearings. The attached procedure for local hearings has therefore been amended to take account of these changes, as follows:

- Where a matter is the subject of local investigation, the hearing must be held (i.e. completed) within 3 months of the date on which the Investigating Officer presents his/her final report to the Monitoring Officer.
- The regulations now state specifically that, if the Standards Committee in the course of a hearing feels that it needs additional evidence in order to come to a determination of the matter, it can adjourn and request the Monitoring Officer to provide such further information or undertake further investigation, but the Committee can only do so once on any one matter.
- The regulations now make it clear that the Standards Committee has the flexibility to combine sanctions. Accordingly, the Committee can now set the sanctions in any particular case as any one, or combination, of the following:
 - a. censure;
 - b. restriction of access to Council premises or use of Council resources for up to 3 months;
 - c. a requirement to give a written apology;
 - d. a requirement to undergo training;
 - e. a requirement to undertake conciliation;
 - f. suspension or partial suspension for a period of up to 3 months, and
 - g. suspension or partial suspension until the Councillor undertakes training or conciliation or provides a written apology.

This makes it clear that the Standards Committee could, in an appropriate case, determine that the member should be subject to a 3-month suspension but that, if he/she were to provide a written apology and undergo training, the suspension would be reduced to a 2-month partial suspension from, for example, just the Planning Committee.

- The regulations also allow the Standards Committee to ask the Standards Board to resume responsibility for a matter at any stage. This would normally be where the Investigating Officer's report identifies conduct of such seriousness that the Committee believes that its maximum sanction would be inadequate, but it could be relevant if so many members of the Standards Committee were conflicted out of any hearing on a matter that it would not be possible to hold a hearing, or if the Committee felt that local circumstances made it impossible to hold a proper and impartial hearing on the matter. Such a request must be directed to the ESO, who has the final decision whether to resume responsibility for the case. Such a request cannot be made once the hearing has been concluded.

Recommendation Three:

That the amended Procedure for Local Determination Hearings set out in Appendix B be adopted by the Committee and that the function of holding local hearings be delegated to the already established sub-committees once the first three referred cases have been dealt with by the full committee.

I. Costs of Investigations of Parish and Town Council Matters

1. District Councils remain responsible for standards matters in respect of Parish Councils in their own areas. The regulations provide that where, in the course of an investigation, the Investigating Officer requires a Parish Council to provide any advice or assistance in connection with the investigation, the District Council shall meet any reasonable costs incurred by the Parish Council in providing such advice or assistance. Accordingly, where the District Council is required to arrange the investigation of a complaint against a Parish Councillor, the District Council not only has to bear the direct costs of the investigation and any subsequent hearing but, in addition, if the Investigating Officer requires the Parish Council to provide information for the investigation, such as copies of any Codes of Conduct, minutes of meeting, records of the Parish Council's land ownerships, contracts or other activities, the Parish Council can recover the costs of providing such information from the District Council.

J. Local Protocols

The Council has adopted a local protocol of good practice for councillors dealing with planning matters. In so far as complaints of breaches amount to breaches of the Council's Code of Conduct they would be dealt with in

accordance with those procedures. For other complaints under the protocol, a shorter and less formal process is envisaged to bring matters before the Standards Committee for consideration and this will be kept under review to ensure it works satisfactorily.

RECOMMENDATIONS:

It is recommended that:-

- (i) The Council provide an indemnity to Investigating Officers against any claims for defamation, and that the Council insure such risk.**
- (ii) The Committee approve the Procedure for Local Investigations set out at Appendix A.**
- (iii) The amended Procedure for Local Determination Hearings set out in Appendix B be adopted by the Committee and that the function of holding local hearings be delegated to the already established sub-committees once the first three referred cases have been dealt with by the full committee.**
- (iv) Minor consequential amendments be made to the Standards Committee terms of reference to include consideration and determination of reports following referrals for local investigation.**
- (v) The Monitoring Officer examines the feasibility of further training for councillors before any local hearings are held.**

PROCEDURE FOR LOCAL INVESTIGATION OF ALLEGATIONS OF COUNCILLOR MISCONDUCT

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PROCEDURE FOR LOCAL INVESTIGATION OF ALLEGATIONS OF COUNCILLOR MISCONDUCT

Introduction and Summary

- This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors. This procedure will apply to allegations of breach of the authority's Code of Conduct by elected and co-opted members of the authority and the word "Councillor" is to be taken to refer to all such persons. No material departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed material variation to the procedure and the reasons for that variation.
- Where the Standards Board for England receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Board refers the allegation to an Ethical Standards Officer for investigation. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the authority's Monitoring Officer (or in the case of a Parish Council, to the Monitoring Officer of the local District Council). If the matter is referred before the Ethical Standards Officer has completed his/her investigation, the Monitoring Officer is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee (or to a Sub-Committee of the Standards Committee convened for the purpose). Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the relevant authority's Code of Conduct, the Standards Committee must meet to decide whether to accept that finding or to proceed to a formal hearing. Where the Investigating Officer has found that there has been a failure to comply with the relevant Code of Conduct, or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the relevant Code of Conduct has occurred and whether any action should be taken in consequence.
- In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the relevant Code of Conduct, and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

1 **Interpretation**

- (a) “Councillor” means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor’s representative.
- (b) “Investigating Officer” means the Ethical Standards Officer (ESO) who referred the report to the authority (and his or her nominated representative) or, in the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative).
- (c) “The Matter” is the subject matter of the Investigating Officer’s report.
- (d) “The Standards Committee” refers to the Standards Committee or to any Standards Sub-Committee to which has been delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

2 **Notification of Reference of Allegation to the Monitoring Officer**

(a) **Appointment of Investigating Officer**

Upon receipt of the allegation from an Ethical Standards Officer, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the authority’s Standards Committee. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external Investigating Officer. There are two distinct roles, that of the Investigating Officer and that of legal advisor to the Standards Committee. The Monitoring Officer may him/herself take on the role of Investigating Officer. Where he/she does so, he/she must also arrange for a separate legal advisor to the Standards Committee in respect of the allegation.

The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

(b) **Notification to the Councillor**

The Monitoring Officer will then notify in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) of the conduct which is the subject of the allegation;

- (iv) of the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation;
- (v) of the procedure which will be followed in respect of the allegation, and
- (vi) of the identity of the Investigating Officer.

The Monitoring Officer shall provide the Councillor with a copy of any report received from the Ethical Standards Officer.

In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Councillor.

(c) **Notification to the Standards Committee**

At this stage the Monitoring Officer will not notify the members of the Standards Committee that a matter has been referred for investigation.

(d) **Notification to the Parish or Town Council Clerk**

Where the allegation relates to the conduct of a member of a Parish Council in his/her capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) **Notification to the Person who made the Allegation**

At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(f) **Initial response of the Councillor**

In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (ii) listing any documents which the Councillor would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer where the original documents may be inspected,
- (iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person

or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation, and

- (iv) providing the Investigating Officer with any information which the Councillor would wish the Investigating Officer to seek from any person or organisation.

(g) **Supporting information from the person who made the allegation**

In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days

- (i) listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- (ii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iii) providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

3 **Conduct of Investigation**

(a) **Purpose of the Investigation**

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Standards Committee a report which, together with any report provided by the Ethical Standards Officer, would provide the Standards Committee with sufficient information to determine whether the Councillor has acted in breach of the relevant Code of Conduct and, where there has been a breach of the Code of Conduct whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

(b) **Termination of the Investigation**

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

(c) **Additional Matters**

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct,. The Monitoring Officer will then determine whether to report the additional matter to the Standards Board for England.

(d) **Identification of people from whom Investigating Officer will seek information**

Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(f)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

(e) **Production of documents, information and explanations**

- (i) In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.
- (ii) In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any authority of which the Councillor is a member to provide any document which is in his/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

(f) **Interviews**

(i) **Requesting attendance**

In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any information, document or explanation for the purpose of Paragraph

3(e) above, as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) **Representation**

Any person who appears before the Investigating Officer may arrange to be accompanied at their own expense by a solicitor or friend.

(iii) **Notes of interviews**

Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

(g) **Costs**

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his/her request, such fees or allowances as he/she considers to be appropriate subject to any maxima set by the authority.

(h) **Reference back to the Standards Board**

At any point in the course of the investigation, if the Investigating Officer is of the opinion

- (i) that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
- (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the Ethical Standards Officer to resume his investigation of the matter.

Where the Ethical Standards Officer does resume his investigation, the Monitoring Officer shall ensure that the Councillor concerned, the person who made the complaint, the members of the Standards Committee and any Parish Council is informed of such resumption. Where the Ethical Standards Officer declines to resume his investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his investigation.

4 **The Draft Report**

- (a) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report setting out:
- (i) the details of the allegation;
 - (ii) the relevant provisions of statute, of the Code of Conduct and any relevant local Protocols
 - (iii) the Councillor's initial response to notification of the allegation (if any);
 - (iv) the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
 - (v) a list of any documents relevant to the matter;
 - (vi) a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
 - (vii) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
 - (viii) a statement of his/her draft findings of fact;
 - (ix) his/her conclusion as to whether the Councillor has or has not failed to comply with the relevant Code of Conduct, and
 - (x) any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.

NB: Where the allegation relates to a Parish Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards Committee make to the Parish Council.

- (b) The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the Investigating Officer will present a final report to the Standards Committee once he/she has considered any comments received on the draft report.

- (c) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days. The Investigating Officer shall also send a copy of his/her draft report to the Monitoring Officer.
- (d) The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

5 **The Final Report**

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses;
- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
 - (i) where the final **report concludes that there has not been a failure to comply** with the Code of Conduct, he/she will refer the report to the Standards Committee for their consideration, and
 - (ii) where the final **report concludes that there has been a failure by** the Councillor to comply with the Code of Conduct, he/she will refer the report to the Standards Committee for a formal hearing.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to:
 - (i) The person who made the complaint;
 - (ii) The Clerk to the Parish (if any); and
 - (iii) The Ethical Standards Officer

together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.

- (d) Where the Standards Committee considers the report in accordance with Paragraph 5(b)(i) above, it shall make one of the following findings:
 - (i) That it accepts the Investigating Officer's finding that the Councillor has not failed to comply with the relevant Code of Conduct as set out in the allegation;
 - (ii) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.

NB: This is not a finding that there has been a failure to comply with the Code of Conduct, but simply that, on the basis of the Investigating Officer's report, the Standards Committee is not at this stage prepared to come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.

- (e) Where the Standards Committee finds as set out in Paragraph 5(d)(i) above (no failure to comply with the Code of Conduct), the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to
 - (i) The Councillor;
 - (ii) The Ethical Standards Officer;
 - (iii) The Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
 - (iv) The Standards Committee of any other local authority (other than a Parish Council) of which the Councillor is also a member
 - (v) The Parish Council, if the Councillor was also a member of a Parish Council, and
 - (vi) The person who made the allegation.

And shall ask the Councillor whether he objects to the publication of a notice of the finding in at least one local newspaper, and arrange for the publication of such a notice unless the Councillor so objects.

- (f) Where the Standards Committee finds as set out in Paragraph 5(d)(ii) above (that the matter should be considered at a full hearing) or the Investigating Officer's report contains a finding that the Councillor did fail to comply with the Code of Conduct, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings, subject to the following variations:

- (i) The hearing shall be conducted no sooner than 14 days from, and no later than 3 months from the date on which the Monitoring Officer received the final report of the Investigating Officer;
- (ii) the report of the Investigating Officer shall be treated as if it constituted the report of the Ethical Standards Officer; and
- (iii) the Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom he considers that the Standards Committee should hear in order to be able to give the matter proper consideration.

6. **Other Directions to the Monitoring Officer from an ESO other than investigation or determination**

- 6.1 Not all referrals to the Monitoring Officer from an ESO will require investigation. An ESO can decide that some form of action other than investigation or determination is required. This is most likely to happen in situations where the ESO considers that a case has broad relevance for the ethical governance of the council. For example, the ESO may direct the Monitoring Officer to make recommendations to the Standards Committee about wider issues for the authority raised by the case, or to ensure that the parties concerned attempt some form of reconciliation.
- 6.2 The Monitoring Officer should report back to the ESO within 3 months of receiving the directions on the outcome of actions taken or with details of proposed actions.
- 6.3 If the ESO is not satisfied with the action taken or proposed to be taken, the ESO may require the Monitoring Officer to arrange for the publication of a statement giving details of the direction and the Monitoring Officer's reasons for not fully implementing the directions.

APPENDIX B

PROCEDURE FOR LOCAL DETERMINATION HEARINGS

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PROCEDURE FOR LOCAL DETERMINATION HEARINGS

1. Interpretation

- (a) 'Member' means the member or co-opted or former member of a relevant authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' or 'Investigating Officer' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative.¹ In the case of matters referred to for local investigation, references to the Investigator or Investigating Officer mean the person appointed by the Monitoring Officer to undertake the investigation (which may include the Monitoring Officer and his/her nominated representative).
- (c) 'The Matter' is the subject matter of the investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) 'The Chairman' refers to the person presiding at the hearing.

2. Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

3. Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person other than someone who will also be a witness. Note that the cost of such

¹ In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Committee. It is, therefore, convenient for the Monitoring Officer to conduct the pre-hearing process and to present the introductory report to the Committee at the commencement of the hearing.

representation must be met by the Member, unless the Committee has expressly agreed to meet all or any part of that cost.²

4. The Pre-Hearing Procedure

The Monitoring Officer shall conduct the Pre-Hearing Procedure in accordance with the attached procedure.

5. Legal Advice

The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member and the Investigator if they are present.³

6. Setting the Scene at the Hearing

At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the Member (if present), the Investigator (if present) and any other officers present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

7. Preliminary Procedural Issues

The Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the Committee is quorate.⁴

(c) Hearing Procedure

² Once regulations are made under Section 100 of the Local Government Act 2000, authorities will have a discretion to provide an indemnity to Councillors in specified circumstances.

³ In the interests of openness, the Committee may prefer to receive any such advice in the main hearing room in the presence of the Investigator and the Member. Where this is not practicable, the Legal Advisor should repeat in the presence of the Investigator and the Member the advice which he/she has tendered.

⁴ A meeting of the Committee is not quorate unless at least three Members of the Committee are present for the duration of the meeting. The three Members must include at least one Independent Member, unless an Independent Member would have been present but was precluded from participating in any of the business of the Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its Members. However it is only a requirement that the parish representative is actually present when the Committee is dealing with a parish matter. Parish Sub-Committees, convened to deal with a parish matter, must have a parish representative as a Member of the Sub-Committee, but there is no requirement for him/her actually to attend the meeting for it to be quorate. [The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812].

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:-

- (i) the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;
- (ii) the Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
- (iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date subject to its overriding duty to determine the Matter within three months;
- (iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the Matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from its consideration of this Matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the Member, the Investigator and the Legal Advisor to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

8. **The Hearing of the Allegations of a failure to comply with the Code of Conduct**⁵

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigator's report.⁶

- (a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chairman will ask the Legal Advisor or the Committee Support Officer⁷ to present his/her report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigator's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigator's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Committee may then make a determination that the member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken (Paragraph 8).
- (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (if present) whether he/she is in a

⁵ The model procedure recommended by the Standards Board suggests that the Committee should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. I suggest that these two are so closely connected that the Committee may find that it can conveniently determine the two together without any loss of fairness.

⁶ Note that the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigator's report. It is possible that, in the course of their consideration, the Committee apprehend that the Member may have failed to comply with the Code of Conduct in some other manner (for example that the Member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the Member's office or authority into disrepute). Note that such a possible additional or alternative failure will not, at that stage be able to be considered since the Member will not have had notice of the Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Committee do apprehend a possible additional or alternative failure, a failure by a different member, or a failure in respect of the code of conduct of another authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Boards for England.

⁷ As set out above, unless conflicted out, it is likely that the Monitoring Officer will:-

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the Legal Advisor to the Committee; and
- (iv) will distribute and publish any required notices of the Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the member to challenge the veracity of those findings of fact which are set out in the Investigator's report but in respect of which the member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.

- (c) Presenting the Investigator's report
 - (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
 - (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
 - (iii) No cross-examination shall be permitted but, at the conclusion of the Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should seek the advice of the Investigator or the witness.
- (d) The Member's response
 - (i) The Chairman shall then invite the Member to respond to the Investigator's report and to call any witnesses as necessary to address any points of difference.
 - (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should seek the advice of the Member or the witness.

- (e) Witnesses
 - (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
 - (ii) Any Member of the Committee may address questions to the Investigator, to the Member or to any witness.
- (f) Determination as to whether there was a failure to comply with the Code of Conduct
 - (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the Investigator's report. If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.
 - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(b)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.
 - (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) The Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the Member or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Committee.

- (v) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (vi) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the member failed to comply with the Code of Conduct as set out in the Investigator's report.

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

If the Committee determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct (other than the Matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the Legal Advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Member whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

10. **Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chairman shall ask the Investigator (if present, or otherwise the Legal Advisor) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.⁸

⁸ The sanctions which are available to the Committee under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Regulation 7, as amended by the Local Authorities (Code of Conduct) (Local Determination (Amendment) Regulations 2004 are any, or any combination, of the following:-

- "(i) censure of that member;
- (ii) restriction for a period up to a maximum of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member –
 - (aa) are reasonable and proportionate to the nature of the breach; and
 - (bb) do not unduly restrict the member's ability to perform his functions as a member;
- (iii) partial suspension (a) of that member for a period up to a maximum of three months;
- (iv) suspension (b) of that member for a period up to a maximum of three months;
- (v) a requirement that that member submit a written apology in a form specified by the Standards Committee;
- (vi) a requirement that that member undertake training as specified by the Standards Committee;
- (vii) a requirement that the member undertake conciliation as specified by the Standards Committee;

- (b) The Chairman will then ask the Member to respond to the Investigator's advice.
- (c) The Chairman will then ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Committee may address questions to the Investigator or to the Member as necessary to enable him/her to take such an informed decision.
- (e) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Committee will make to the authority with a view to promoting high standards of conduct.
- (f) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

11. **Reference back to the Ethical Standards Officer**

If at any time before the Committee has determined upon any appropriate sanction, it considers that the nature of the failure to comply with the Code of Conduct is such that the appropriate sanction would exceed the powers of the Committee, it may request the Monitoring Officer to refer the matter back to the Ethical Standards Officer and may adjourn the hearing until the

-
- (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee;
 - (ix) partial suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the Standards Committee may specify;
 - (x) suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee;
 - (xi) suspension of that member for a period up to a maximum of three months or until such time as he undertakes such training or conciliation as the Standards Committee may specify".
- (a) See section 83(7), (9) and (10) of the Act for the interpretation of partial suspension
 - (b) See section 83(9) and (10) of the Act for the interpretation of suspension.

Any sanction imposed shall commence immediately unless the Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Committee within six months of the date of the hearing. The effect of suspension is temporarily to deprive the Member of the benefits of any position within this authority from which the Member is suspended, for the duration of the suspension. Thus, during the period of suspension, a Member who is suspended from the Executive would lose any special responsibility allowances which he/she received as a Member of the Executive. A Member who is suspended in total would also lose any basic allowances for the duration of the suspension, and be unable to claim any travelling or subsistence allowances as they would not be incurring any such expenses in the discharge of their functions as a Councillor. But at the end of the period of suspension, the Councillor would automatically slot back into the positions which he/she held prior to the suspension, unless the Council had positively removed him/her from any such position in the meantime.

Monitoring Officer advises the Committee of the Ethical Standards Officer's response to such a request.

12. **The Close of the Hearing/Appeals**

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing
- (c) Following the close of the hearing, the Committee Support officer will agree a formal written notice of the Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.⁹
- (d) The notice to the Member shall include a statement as to the rights of the Member to seek permission to appeal from the president of the Adjudication Panel within 21 days of receipt of notification of the finding and shall provide the Member with the necessary appeal form.

⁹ Note that the summary will include:-

- (a) the name of the Member
- (b) the alleged failure to comply with the Code of Conduct
- (c) the finding of the Committee that the Member did or did not fail to comply with the Code of Conduct
- (d) the details of any failure
- (e) brief reasons for the finding
- (f) any sanction or other action determined or recommended
- (g) a statement that the Member has a right of appeal

THE PRE-HEARING PROCEDURE

1. Purpose of Pre-Hearing Procedure

The pre-hearing process is designed to address procedural issues in order to ensure local determinations are dealt with fairly and efficiently.

The aims are:-

- (a) to identify whether the member the subject of the hearing disagrees with any of the findings of fact in the report of the investigator;
- (b) to decide whether any disagreements are significant to the hearing;
- (c) to decide whether or not to hear evidence about these disagreements;
- (d) to decide whether any parts of the hearing should be held in private or any parts of the investigator's report should be withheld from the public.

2. Format of Pre-Hearing Procedure

The pre-hearing process will be conducted in writing by the Monitoring Officer.

3. Notification to the Member

Upon **EITHER**

- (i) reference of a matter from an Ethical Standards Officer for local determination following completion and receipt of the Ethical Standards Officer's report,

OR

- (ii) receipt of the final report of the Investigating Officer on a matter referred for local investigation which includes a finding that the member failed to comply with the relevant Code of Conduct or where the Standards Committee finds that the matter should be considered at a formal hearing,

the Monitoring Officer will:-

- (a) arrange a (provisional) date for the hearing (not less than 35 days from the date the investigator's report is received by him but the hearing must be held within the period of three months from the date the Monitoring Officer received the final report) and identify the Committee or Sub-Committee by which the hearing will be held;
- (b) notify the members of the Committee/Sub-Committee of the date;
- (c) notify the member of the reference of the complaint for local determination (where relevant), of the provisional date for the hearing

and provide the member with a copy of the Investigator's report, the pre-hearing procedure note and the hearing procedure;

- (d) notify the Parish Clerk of the same matters in the case the relevant member is a Parish Councillor;
- (e) notify the complainant of the same matters.

4. **Pre-Hearing Inquiries of the Member**

Following notification under paragraph 3 the Monitoring Officer will write to the member and require him to complete and return within 14 days (or such longer period as the Monitoring Officer shall in his discretion permit) Forms A to E substantially in the form recommended by the Standards Board. These forms will ask the member to identify findings of fact with which the member disagrees; identify any additional evidence relevant to the allegation, and to provide detailed information relevant to attendance at the hearing and calling of witnesses and views on the need for private hearings in whole or part.

- Notes:**
- (a) The presumption is that the hearing will be conducted in public and that all documentation will be available for public inspection at least five clear days before the hearing. The decision to conduct all or any part of the hearing in private or to withhold any document from public inspection will be taken in accordance with the legal provisions on access to information in the Local Government Act 1972 (as amended) having due regard to the Human Rights Act 1998. A note on admission of press and public to Standards Committee hearings is attached to the Hearing Procedure.
 - (b) Having been given an opportunity to identify disagreement with the findings of fact contained in the report of the investigator, the member will not be permitted to raise at the hearing any new disagreement, unless exceptional reasons exist for doing so e.g. as a result of new evidence which has only just become available.
 - (c) The provisional hearing date will not be changed unless the reasons why he/she/the representative is unable to attend on the proposed date. Even where there are good reasons to change a date, the hearing may have to take place in the absence of the member or representative if necessary to enable the Committee/Sub-Committee to make a determination within the period required by law.
 - (d) If the member fails or declines to acknowledge receipt of the investigator's report or return the Forms A to E (or any of them) or decides not to attend the hearing, the Committee or Sub-Committee may hear the case in his absence.

5. **Pre-Hearing Inquiries of the Investigator**

On receipt of the response of the member to the investigator's report and the forms referred to in section 4 (or on the expiry of 14 days or such longer period as has been permitted from their being sent to the member whichever is the sooner), the Monitoring Officer will:-

- (a) notify the investigator of the date of the hearing;
- (b) invite the investigator to comment on the member's response (if any) within 14 days and indicate whether he intends to attend the hearing or be represented or give evidence or call witnesses and whether he wishes any part of the hearing to be held in private or any part of his report to be withheld from the public;
- (c) invite the attendance of the investigator if the proper conduct of the hearing requires it in the opinion of the Monitoring Officer.

6. **Preparations for Hearing**

- (a) The Monitoring Officer shall identify any areas of dispute between the member and the investigator and arrange for the attendance of any necessary witnesses to enable the hearing to resolve any such points of difference.
- (b) The Monitoring Officer shall have the discretion to decide whether the hearing date should be changed and, subject to ratification by a resolution of the Committee or Sub-Committee conducting the hearing, whether any part of the hearing should be conducted in private or any part of the investigator's report or documents should be withheld from the public.
- (c) The Monitoring Officer shall prepare a Pre-Hearing Summary Report summarising:-
 - (i) the complaint;
 - (ii) the investigator's report and findings;
 - (iii) the conduct of the pre-hearing procedure recording any facts which are not agreed, who will be present at the hearing and the witnesses to be called;
 - (iv) the key issues to be determined by the hearing;
 - (v) enclosing a copy of the adopted hearing procedure;

and he shall provide the Proper Officer with this report together with all relevant documents to be sent to the member, the complainant and members of the Committee/Sub-Committee together with an agenda for the meeting.

ADMISSION OF PRESS AND PUBLIC TO STANDARDS COMMITTEE DETERMINATION HEARINGS

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

1. At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the Local Government Act 1972 (as modified in relation to local determinations by Standards Committees). If the Committee considers that ‘confidential information’ is likely to be revealed during the hearing, the Committee must exclude the public by law. ‘Confidential information’ is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
2. The Committee also has the discretion to exclude the public if it considers that ‘exempt information’ is likely to be revealed during the hearing. The categories of ‘exempt information’ are set out below. The Committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee also has a duty to act fairly and in line with the rules of natural justice.
3. Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:-
 - (a) Morals;
 - (b) public order;
 - (c) justice;
 - (d) natural security in a democratic society; or
 - (e) protecting young people under 18 and the private lives of anyone involved.
4. There should be a public hearing unless the Committee decides that there is a good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
5. The Committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to ‘receive and impart information and ideas without interference by public authority’. Any restrictions on this right must be ‘prescribed by law and.....necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’.

6. Conflicting rights often have to be balanced against each other. The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:-
 - (a) in line with the law; and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security;
 - (ii) public safety;
 - (iii) the economic well-being of the country;
 - (iv) preventing crime or disorder;
 - (v) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - (vi) protecting people's rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

7. In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary' and must meet 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
8. The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. This will not conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

**CATEGORIES OF EXEMPT INFORMATION UNDER SCHEDULE 12A OF
THE LOCAL GOVERNMENT ACT 1972 (AS MODIFIED IN RELATION TO
LOCAL DETERMINATIONS BY STANDARDS COMMITTEE)**

1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:-
 - (a) a magistrates' court committee;
 - (b) a probation committee within the meaning of the Probation Service Act 1993; or
 - (c) a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.
- 2A. Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
6. Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
9. Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:-
 - (a) any legal proceedings by or against the authority; or
 - (b) the determination of any matter, affecting the authority;(whether in either case, proceedings have been commenced or are in contemplation).
13. Information which, if disclosed to the public, would reveal that the authority proposes:-
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
15. The identity of a protected informant.
16. Information relating to the personal circumstances of any person.
17. Information which is subject to any obligation of confidentiality.
18. Information which relates in any way to matters concerning national security.
19. The deliberations of a Standards Committee or a Sub-Committee of a Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the Local Government Act 2000.