

TAUNTON DEANE BOROUGH COUNCIL

STANDARDS COMMITTEE 16 APRIL 2008

GUIDANCE FOR STANDARDS COMMITTEES AND MONITORING OFFICERS

1. At the last meeting members asked to be provided with some guidance as to its role when the new Regulations relating to local determination were introduced.
2. At that time it was anticipated that the new Regulations would be introduced with effect from 1 April this year. It was hoped that the Standards Board for England would provide guidance on the new regime.
3. Since our last meeting the majority of members of this Committee have attended a very useful Training Day at County Hall. Hazel Salisbury, Director of Casework at the SBE made a very helpful presentation, gave us some tips and tricks and involved everyone in a training exercise for local assessment.
4. The Regulations have not yet been introduced and there is still no sign of any official guidance from the SBE. However, our new Monitoring Officer Tonya Meers has managed to get hold of a raft of draft guidance which the Committee will find helpful. The guidance is attached to this report. Please bear in mind that this is only draft at this stage and has no official status. It is, however, fairly safe to predict that this will form the basis of the official guidance when it is released. It will also give members a good idea of the different roles they will have to play and the procedures they will need to adopt.
5. There is still no date for the introduction of the new Regulations but keen readers of SBE Bulletin37 will have seen that the DCLG were considering suggestions that the implementation date be 1 May 2008.

December 2007



Standards committees

Guidance for standards committees and
monitoring officers

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Introduction

Phil Woolas, Minister for Local Government, 2006

"A more locally-based conduct regime would ensure the right local ownership and a firmly embedded standards regime where it really matters, at the centre of local authorities. We need a culture of high standards in every authority in the country – it has to be the norm, not something remarkable or exceptional. This is not just a set of rules to be enforced, but has to be part of the political culture."

The quote above demonstrates the government's vision to reinforce the importance of high standards at a local level and help authorities take greater responsibility for maintaining those high standards. Through the *Local Government and Public Involvement in Health Act 2007* (which amended the *Local Government Act 2000*) the government is encouraging local decision making on conduct issues and local ownership of standards. The changes create a better balance between self-regulation by members and the involvement of independent chairs and members of standards committees to ensure public confidence in the system. A locally based approach will also help embed high standards of ethical conduct in each authority, and increase the public's trust in their locally elected representatives.

There needs to be a culture of high standards in every authority and each authority has the opportunity to reinforce their position as leaders in standards of conduct, setting an example to other bodies they work with and to the community at large.

In each authority the standards committee has a vital role to play to promote, educate and support members in following the highest standards of conduct and to ensure that those standards are fully 'owned' locally. There is strong evidence already that authorities, from chief executives and political leaders to standards committees and monitoring officers, are gaining confidence in their role as champions of high standards.

Meanwhile, as the Standards Board for England evolves into a strategic regulator, we will provide the independent monitoring and oversight that are essential for the public to feel confident that the highest possible standards are being maintained, including providing the necessary guidance to monitoring officers and standards committees to make sure they are well supported in carrying out their roles effectively.

This guide

This guide provides information on the XXX Regulations and provides our view on the role and make-up of standards committees. Under the regulations, standards committees must take this guidance into account. This guide is for monitoring officers and standards committee members of:

- district, unitary, metropolitan, county and London borough councils
- police authorities
- fire authorities (including fire and civil defence authorities)
- passenger transport authorities
- the Broads Authority
- National Park authorities
- the London Fire and Emergency Planning Authority
- the Greater London Authority
- the Common Council of the City of London and
- the Council of the Isles of Scilly.

Members of parish and town councils may also find this guide useful.

Under section 53 of the *Local Government Act 2000*, your authority must set up a committee called a standards committee. *The Relevant Authorities (Standards Committee) Regulations 2001* (references to further regulations may be required) set out the rules governing the size and composition of the standards committee and should be referred to in conjunction with this guidance.

Under the *Local Government Act 2000*, standards committees have the following 'statutory functions'. They must:

- give the authority advice on adopting a local Code of Conduct;
- monitor the effectiveness of the Code
- train members on the Code or arrange for such training
- promote and maintain high standards of conduct for members and
- help members to follow the Code of Conduct

In addition, under the *Local Government and Public Involvement in Health Act 2007*, standards committees must assess complaints against elected and co-opted members of authorities and hold determination hearings into whether or not a member has breached the Code of Conduct.

You can also give your standards committee other functions. We believe that standards committees should be proactive by introducing change rather than reacting to events. Ultimately, standards committees should aim to create and maintain ethical organisations.

Creating and maintaining an ethical organisation is not just about adopting a Code of Conduct for members. It is also about relationships both internally between members and authority staff, and externally with members of the

public and other stakeholders. It is about how the authority relates to the community and other stakeholders and improves the service it provides. It involves the input and dedication of members, partners and authority staff.

Throughout the guidance we are going to use the term 'independent member(s)' to describe members appointed by the authority under section 53(4)(b) of the *Local Government Act 2000*.

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Size and make-up of standards committees

The *Local Authorities (Standards Committee) Regulations 2001* provide for the size and make up of standards committees and for the appointment of parish and independent members.

You must have at least three people on your standards committee. At least two of the committee members must be elected members and at least one must not be an elected member or an employee of an authority at the time of appointment. This person is referred to as the 'independent member'.

If you have more than three people on your standards committee, at least 25% of the members must be independent. For example, if your standards committee has five members, at least two of the members must be independent members. The chair of the standards committee must always be an independent member.

If your authority is operating executive arrangements, the elected mayor or elected leader may not be a member of the standards committee.

If your authority is responsible for any parish or town councils, at least one representative from those parish or town councils must be on your standards committee. The parish or town council representative must also not be a member of your authority. A parish or town council representative must be present whenever matters that affect parish and town councils are being discussed.

If you do not have responsibility for any parish or town councils, we recommend you have at least three members of the authority and three independent members on your standards committee because of the new functions being transferred to it. This is because if you carry out an assessment of a complaint that a member has breached the Code of Conduct you will not then be able to be involved in a review of that assessment decision. A different 'pool' of members will be required for that purpose (detailed guidance on the 'local assessment' of complaints can be found in the guidance titled *Local assessment: Guidance for monitoring officers and standards committees*).

Independent members

The reason for having an independent member is to help increase public confidence and provide a clear signal that the committee is fair. The independent member also brings a wider perspective from outside experiences. There is no limit to the number of independent members you can have on your standards committee. The independent member must not be a member or employee of your authority or any authority at the time of appointment and must not have been within the period of five years immediately preceding the date of the appointment have been a member or officer of the authority, or a relative or close friend of a member or officer of the authority.

Your authority decides how long an independent member should sit on the committee and we recommend that a fixed period of three years is set. This period of time will be long enough for them to gain an understanding of the committee, the authority and its workings, but no so long that they lose their independence. It may be helpful to have the appointment of independent members for differing lengths of time so that the experience gained by independent members is not all lost at the same time. The authority can also decide if it will permit re-appointments.

The role of the chair

The chair of the standards committee must always be an independent member. In addition to the legal requirement it is important for the chair to be independent because of the key role the chair plays in the business of the standards committee. The chair will not only act as the chair of meetings of the committee but will generally ensure the smooth running of the committee. Therefore it is important that the chair is independent so that he/she can ensure that the business of the standards committee is conducted in such a way that no one can question the integrity of the standards committee.

An effective chair will ensure that the business of the meeting is completed whilst allowing a fair and balanced debate, taking into account any professional advice. The chair may summarise the points of view put to the committee, and will ensure that the meeting is run correctly from a procedural point of view. He/she is responsible for keeping order and adjourning meetings where necessary. Again, it is the responsibility of the chair to ensure that members of the public and press leave the meeting when a motion to move to private session is approved or an 'exempt' report is to be considered.

The chair may act as chair of a hearing panel. The chair will announce the decision of the panel, the penalty (if any) being imposed, and will sign the written decision of the panel. The chair will also need to ensure that the hearing is procedurally fair and impartial.

The chair may also liaise with the monitoring officer when the agenda is being prepared.

However, it is the chair's status as an independent member, a role drawn from outside the authority, and independent from the authority, that enhances confidence in local democracy and contributes to an ethical environment within the authority. The chair should enjoy the respect of all members of the authority.

Choosing an independent member

You must choose the independent members in a fair and open way.

A person can be an independent member only if:

- He or she has not been a member or employee of your authority within the five years before the date of appointment.
- He or she is not a relative or close friend of a member or employee of your authority.
- He or she filled in an application for the position.
- He or she has been approved by the majority of members and
- The position has been advertised in at least one newspaper distributed in your authority's area.

We believe in practice this means that it will be the full council of the authority which approves the appointment. The standards committee may set up a panel of suitably trained members to short list and interview potential candidates. Accepting curriculum vitae with an application form may make the process easier for busy candidates. We recommend that the monitoring officer should be involved throughout the recruitment process so that he/she can advise the panel on the appropriate steps throughout the process.

If you are finding it difficult to recruit independent members you should review the criteria of the advertisement and make sure they are realistic. For example, you could check that you are not asking the member to invest an unrealistic amount of time in the role.

You may also wish to consider additional methods of recruitment which could include:

- An article in the local press about the role of an independent member.
- Advertisement on your website or on your local radio station.
- Flyers in libraries; adult learning centres or places of worship.
- Advertisement through other authorities' partnerships or through the local voluntary or community sector.
- The personal approach.

Remember that all the selection criteria for the position will still apply, so even if you approach someone directly, they must still make a formal application.

The qualities you look for in an independent member will depend on the area your authority serves, but you may want to look for applicants who have:

- A keen interest in standards in public life.
- A wish to serve the local community and uphold local democracy.
- High standards of personal integrity.
- The ability to be objective, independent and impartial.
- Sound decision making skills.
- Questioning skills.
- A good level of assertiveness.
- Leadership qualities, particularly in respect of exercising sound judgment.
- The ability to act as the chair of a determination hearing.

The interview and any assessment process should be matched against these qualities. You also need to ensure that your authority complies with its duties under the *Equalities Act 2006*. The human resources department of your authority may be able to advise you further on this matter.

For further information on the recruitment of independent members, you may wish look at the recruitment pack produced by the Association of Council Secretaries and Solicitors. The pack provides practical advice on how to set about recruiting independent members together with their roles and responsibilities. The pack can be downloaded at www.acses.org.uk

Parish and town council representatives

We recommend you have a minimum of three parish or town council representatives on your standards committee, bringing the recommended total number of people on your standards committee to nine members. This is so that you can meet the requirement of having a different parish or town council representative when the committee, or sub-committee, assesses a complaint about a member and a review of a decision to take no action is requested. Three parish or town council representatives will provide you with flexibility and should enable the local assessment of complaints to be carried out if a parish or town council representative is unavailable or conflicted out. Again, you may wish to increase the minimum number further and we would encourage this wherever possible.

The authority may appoint a panel of parish or town council representatives, for example, if several members take it in turns to sit on the standards committee. However, you will need to make sure that there is still an appropriate balance within the committee, and that voting rights are used correctly. Your council may appoint a parish sub-committee to deal with some of its functions relating to parish and town council matters. Your parish and town councils must be consulted about this and any sub-committee must include at least one member of any parish or town council in the area and at least one independent member.

Choosing parish and town council representatives

Your authority decides how to recruit parish or town council representatives. However, the member should have the trust of people in your area, so you should involve all parish and town councils in the selection procedure. If you are finding it difficult to find a parish or town council representative, your local county association of local councils may be able to help you. For example, the county association may be able to give you a list of possible candidates. They may be prepared to conduct the election process for you. Alternatively you could send the list of candidates to all parish and town councils within your area for voting. This process should gain the approval of the parish and town councils in the area and show that you want to appoint standards committee members in a fair and open way.

We would encourage standards committees to have more than one parish or town council representative as this shows that parish issues are going to be dealt with fairly. It prevents the parish representative from feeling isolated and it will also avoid meetings becoming invalid (incomplete) if the parish or town council representative is not present when issues affecting parish or town councils are discussed.

Other members of standards committees

Executive members on the standards committee

The committee does not need to include a member of the executive. However, the authority should consider whether it is appropriate to appoint an executive member in order to show that the committee is supported and respected by all parts of the authority. However not having an executive member may reflect a degree of independence from the political leadership of the authority.

Elected members on the standards committee

Standards committees need not reflect the political balance of the authority. This is because the standards committee should be above party politics and its members need to have the respect of the whole authority, regardless of their political party. Indeed, it may be helpful to remind elected members of this when committee appointments are being made. It may be appropriate to have an equal number of members from all parties represented on the council of the authority.

It would be useful for your standards committee to include members who have the support of all political parties, and particularly so when the local assessment of complaints are being operated and determinations on breach and sanctions are being made. This is so that greater trust and confidence can be established in the decision making process amongst all political members. The standards committee and its members will need to be adaptable to meet the new demands being placed on them by the local assessment of complaints process, local determinations and the possibility of joint working.

Elected members on standards committees should not be whipped (told how to vote on matters). Many of the standards committee's function should be regarded as quasi-judicial (making judgments and so be able to consider matters impartially and without regard to party loyalty)

The role of the monitoring officer

Your monitoring officer plays an important role in helping the standards committee to carry out their functions. Your monitoring officer should have the experience, skills and contacts necessary to do this. The monitoring officer is the link between your members and the standards committee, and also plays an important role in the relationship between parish and town councillors and the standards committee.

Monitoring officers are well- equipped to monitor the effectiveness of the Code of Conduct and may want to help train standards committee members on ethical behaviour.

Monitoring officers will discuss the agendas for meeting of the standards committee with the independent chair, and may be the author of many of the reports presented to it. Some reports, for example, informing the committee about the Register of Members Interests, demonstrate value that the authority places on operating in an ethical environment.

Under the Code of Conduct, members must have regard to the advice of the monitoring officer when he/she gives it as part of his/her statutory duties.

Monitoring officers may appoint deputies to assist them in fulfilling their roles, and may do so for example to conduct an investigation on their behalf, and report to the standards committee. Provided they do not direct the investigation, and the person they have appointed to carry out the investigation is independent of them in undertaking the investigation, we believe that the monitoring officer could then advise the standards committee at any hearing into the report (guidance on standards committee hearings and determinations can be found in the guidance titled XXX).

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Functions of standards committees

Under the Local Government Act, standards committees have three specific functions and two general functions.

The specific functions are to:

- Give the council advice on adopting a local Code of Conduct.
- Monitor the effectiveness of the Code.
- Train members on the Code, or arrange for such training.

The general functions are to:

- Promote and maintain high standards of conduct for members; and
- Help members to follow the Code of Conduct.

The functions set out in this section must be adopted by all standards committees and should be set out in their 'terms of reference'. Standards committees can also include other functions as they consider appropriate.

The Audit Commission has recommended authority's to set up audit committees. We recommend that the role of the standards committee compliments the role of the audit committee.

If you change the terms of reference of your standards committee, you must send a copy of the amended terms of reference to us. We are happy for you to e-mail this to us at codeofconduct@standardsboard.gov.uk.

Adopting the Code of Conduct

Your authority may adopt extra provisions in their Code of Conduct to suit local circumstances as long as those provisions are consistent with the Model Code of Conduct 2007 and do not break any relevant law or regulation.

We also believe that all members should be judged by the same standards. If you add provisions to the model Code, you should be aware that members will be assessed against these extra provisions possibly at a national level. If you do want to add extra provisions to deal with specific local circumstances, get legal advice to make sure those provisions can be enforced and do not break any other relevant law or regulation, such as the Human Rights Act.

If your authority thinks that extra provisions are necessary (for instance a more detailed planning or IT protocol), these should be separate from, and run alongside, the model Code of Conduct.

Giving members advice on adopting a Code of Conduct

Your authority originally adopted a local Code of Conduct under Orders made in 2001. The revised code (required to be adopted by 1 October 2007), contains mandatory provisions which apply from that date even if the authority has not adopted the revised code.

Members of the standards committee can give a lead to other members by supporting the adoption of revisions to the Code, and discussing ethical issues widely with their colleagues. Leading by example in declaring the existence and nature of their interests at meetings, and supporting and promoting attendance at training events will help keep the principles which govern the conduct of members and the Code at the centre of the authority's culture and values.

Helping members to follow the Code of Conduct

Your authority can provide training and guidance on how to follow the Code of Conduct. The committee may want to take responsibility for ensuring that all members have signed their declaration of acceptance of office and undertaking to comply with the Code.

You may like to set up meetings, seminars and advice sessions where members can get advice on how to introduce the Code and how it will affect their role in the future. Your authority could consider making ethics training part of an induction programme for members. Authority employees could also be included in any training as ethics is about more than just the Code for members.

If your authority is responsible for any parish or town councils, it must also make sure that training is available to those members. You may want to consult county associations to see if they are providing any training.

We believe that prevention is better than cure, and standards committees should make sure that members know about, and are able to keep to, all the provisions of the Code.

We strongly encourage different tiers of local government to work together on ethical matters, particularly with training as all members should know their rights and responsibilities, regardless of the type of authority.

Training members on the Code of Conduct

Standards committees are responsible for training members on matters relating to the Code of Conduct, or arranging for appropriate training to be provided.

Training is an excellent way for your authority to set out the standards of conduct it expects from its members.

Members should know about the workings and implications of the Code as they are required to sign an undertaking to comply with it

Standards committees may also like to issue guidance notes or memos through their minutes to run alongside the Code. These could include guidance or protocols on local issues and an explanation of any extra provisions proposed to be added to the Code. These could also be included in a members' handbook, and placed on your website.

Standards committees may like to base the training around some examples of potential ethical misconduct. This will allow members to see some of the provisions in action. Case summaries of completed investigations into misconduct are available on our website at www.standardsboard.gov.uk and we have published a *case review* on the 2007 Code of Conduct which is also available on our website.

Monitoring officer should also be able to provide their standards committee with the use of our training DVD on the Code.

Monitoring the effectiveness of the Code of Conduct

Your standards committee needs to monitor how effectively members are adhering to the Code of Conduct and the type of complaints received. This will help you identify where you have problems and what should be included in future guidance and training. Your monitoring officer may provide overview reports to the committee highlighting these issues.

You may wish to note that you can amend and re-adopt your local Code at any time as long as it still contains all of the mandatory provisions of the 2007 Model Code.

Publicity about adopting the Code of Conduct

When your authority has adopted a Code of Conduct or a revised Code you must publish a notice in a local newspaper saying that a Code has been adopted and it is available to be seen by members of the public at all reasonable hours. We would also expect you to place it on your website, with links to your complaints' process and forms.

Your standards committee may want to help the parish and town councils in your area to advertise their Codes. Advertising can be expensive and one advertisement can publicise codes for several authorities. In this case the advertisement could simply list the authorities in the area that have adopted the Code and where it is available for the public to view. The advertisement should be placed in a publication covering all of that area.

You must send a copy of the Code you have adopted to the Standards Board for England. If you add provisions to the model Code, you should highlight any changes before sending them to us. We are happy for you to e-mail this to us at codeofconduct@standardsboard.gov.uk

Promoting and maintaining high standards of conduct

Ethics are about more than members following the Code of Conduct. One of the aims of setting up a standards committee is to create a sense of 'ethical well-being' in the authority, increase confidence in local democracy and to improve the public image of local government. Authorities should review their constitutions regularly, at least once every five years. It should be a 'living' document provided to members available to the public and staff, and on your website. You may want to consider making the standards committee responsible for doing this and for making sure the constitution is designed to reduce the opportunity for misconduct. This does not mean, for example, preventing individual executive members from making decisions, but making sure that the constitution allows for these decisions to be taken only after a thorough discussion. It also means making sure that processes are properly accountable to both members and the public, and that relations with outside organisations are properly managed.

The *Local Government Act 2000* allows your authority to give the standards committee extra appropriate functions. Many standards committees are taking on extra functions. These include assessing the reports from the Ombudsman and District Audit, setting up the independent remuneration panel commenting on recommendations on members' allowances, and dealing with the mandatory protocol for members and authority employees' relations.

You may also want your standards committee to identify potential ethical problems and risk factors.

We believe that giving standards committees wider-reaching responsibilities is a positive step and will help promote confidence in local democracy.

To grant 'dispensations' so members can be included in meetings they would not normally be able to attend due to a prejudicial interest

When over 50% of the authority or a committee would be prevented from taking part in a meeting because of prejudicial interests, or when the political balance of the authority will be upset, members can apply to your standards committee in writing for a 'dispensation' to allow them to attend' or parish and town councils, the district or unitary authority's standards committee will be responsible for granting dispensations.

The dispensation must be agreed by the standards committee, in writing, before the meeting is held, and will set out the terms of the dispensation granted. Members, for the benefit of the public, should declare the interest and make reference to the dispensation granted, when the business is to be discussed.

Sub-Committees of standards committees

Standards committees may appoint one or more sub-committees for the purpose of discharging any of the committee's functions whether or not to the exclusion of the committee. At least one independent member, and one parish representative, if dealing with a parish matter, must be appointed to the sub-committee. Many standards committees currently appoint sub-committees to undertake local hearings and make determinations.

Where the sub-committee is undertaking a casework function, for example, the committee is listening to a hearing or any stage of the local assessment of complaints; we recommend that the chair of the sub-committee be an independent member. This is important so that the public are clear that any decisions made in relation to these functions are done independently and therefore gain greater confidence in the process.

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Other matters for standards committees

Induction for independent members

We recommend that a programme of induction should be available. This could include attendance at authority meetings including meetings of planning and licensing committees. If authorities are operating executive arrangements then attendance at cabinet meetings should be part of the induction. Independent and parish representatives should also receive a copy of the authority's constitution. This should contain a copy of the Code of Conduct that has been adopted by your authority, the protocol for member/officer relations and any other protocol in use. The constitution should also include the scheme of delegations of functions of the authority. Policies such as the whistle-blowing policy, any policies and procedures under the *Equality Act 2006* and the authority's anti bullying policy should also be included. It may be helpful to add a who's who in the authority and a list of authority services and the municipal calendar.

Many authorities are using a buddy system to assist new members, and around the country regional groups of independent members have been established. Information relating to these will be helpful as will a list of useful websites. To find out if there is a regional group of independent members in your area you should contact the Standards Board for England.

Authorities may also wish to consider extending their IT facilities that are available to members to both their independent and parish representatives.

Payment of allowances for independent members

Independent members can claim for financial loss, travel and subsistence. Authorities must introduce an annual scheme for the payment of a basic allowance to its members, based on the recommendations of an independent remuneration panel. The scheme may also provide for the payment of other allowances including a co-optees' allowance. A co-optee's allowance relates to a person who is not a member of the authority but is a member of a committee or sub-committee, for example an independent member of a standards committee. Each authority must consider the recommendations of its panel as to whether it should provide for the payment of a co-optees' allowance and traveling and subsistence expenses.

Authorities were required to make a scheme in accordance with the regulations on or before 31 December 2003. The scheme may be updated as required.

Indemnities for independent members

Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements or insurance cover. Independent members should consult their monitoring officer to find out if the authority indemnifies its members.

Independent members who become employed by a relevant authority, or an authority for which the authority is the responsible authority.

Independent members who take up employment cease to qualify as 'independent members. This does not mean that they have to resign, but they cannot be counted towards the independent member for the quorum for the meeting, and can no longer be the chair of the standards committee. In effect they remain as a co-opted member. We have concerns that public confidence in their impartiality may be eroded, and difficult issues relating to the member/officer protocol, may arise. We recommend that authorities consider including a provision to terminate appointment on taking up direct employment or other contractual relationships.

Signing an undertaking to comply with the Code of Conduct and register of members' interests

Independent members should complete this undertaking and disclose their interests in the register in the same way as other members do. The register of interests is maintained by the monitoring officer.

Validity of meetings

To be a valid meeting at least [three] members of the standards committee, including at least one independent member must be present for the whole meeting. If the independent member cannot take part in a meeting because of your authority's Code of Conduct (for example, where they have a prejudicial interest in the issue being discussed) the meeting will still be valid if at least three members of the committee are present for the whole meeting. The parish- and town-council representative must be present when matters relating to parish and town councils are being discussed.

Transparency in decision making

In principle we believe that meetings of the standards committee and hearings should take place in public. However there will be situations where openness and transparency and the rights of an individual to have their biographical information and their right to a private life respected, must be applied. In publishing the agenda and case papers for hearings, the proper officer will need to be aware, that this may be an issue for debate as part of a proposal to a standards committee to move into a session from which the public and press are excluded. Further information on public meetings can be found in guidance titled XXX (– this may need to refer to more than one guide).

We will be providing further guidance in relation to operating the local assessment of complaints.

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Joint standards committees and model structures

(This section is in its infancy and will be developed in light of subsequent regulations)

In order to promote more effective ways of working, standards committees can work jointly with one or more other standards committees in exercising their functions. This should allow for more efficient use of common resources and aid the sharing of information, expertise, advice and experience.

Regulation XXXX, allows for authorities to operate joint arrangements in respect of their standards committees.

In general, arrangements may be specified in respect of the following:

- size and composition
- appointment of independent members
- access of the public to meetings
- publicity to be given to meetings
- the production of agendas and record of meetings
- the availability to the public or members of relevant authorities of agendas and records
- the proceedings and validity of proceedings of such committees
- voting rights appointment of sub-committees, including a requirement for the sub-committee to include an independent and a parish representative
- requirement to consult with parish and town councils in relation to these proposed arrangements.

Joint committee arrangements can be utilised by authorities to suit individual circumstances. However, authorities who choose to opt for joint committee arrangements need to consider a number of issues. We would recommend that joint committees should ideally not be larger than a county area. One of the key principles behind the local assessment process is that it allows authorities to apply local knowledge and take the lead on its ethical governance arrangements. A joint committee that is too large may be too far removed to properly develop an ethical governance framework within its authority. From a more practical point of view, authorities may find that a large joint standards committee may become unwieldy and difficult to manage. It is for this reason that we recommend that joint committees should be kept to a manageable size.

We have developed three model structures for joint working based on our pilot exercise and a consultation event held with monitoring officers carried out in 2007 (listed in table 1).

The three models are outlined later in this section. At present a number of monitoring officers operate an informal joint working arrangement with their neighbouring authority/s in relation to local investigations. This type of arrangement can continue to be applied. Ultimately, it is for the discretion of

individual standards committees to determine their joint working arrangements.

Model 1- Joint committee for the local assessment of complaints and reviews of decisions to take no action

Model 1 is where a standards committee will work with their neighbouring standards committee specifically in relation to the local assessment and review of complaints that members have failed to comply with the Code of Conduct.

The defining feature of this model is that authorities will be able to retain their own standards committee and, aside from assessing complaints and reviews, the authorities own standards committee will perform all other functions independently.

The advantage of this model is that it allows a standards committee to share resources with its neighbouring committee(s) when assessing and investigating complaints and therefore saves costs, yet at the same time retain ownership of all the other functions including the hearing process. This will ensure that the local authority is applying sanctions based on its local knowledge and takes responsibility for implementing standards in its local authority. It may also help to minimise the number of members needed for the standards committee.

Model 2 - Joint committee for the local assessment of complaints, reviews of decisions to take not action and determination hearings

This model is an extension of Model 1. This arrangement will allow standards committees to retain their own standards committees. However, in addition to working on the local assessment and review of complaints, standards committees who adopt this model will also share joint working arrangements on training and determination hearings.

As this model will allow other standards committee members to issue sanctions, authorities need to be aware that members may not be comfortable with members of another authority taking part in a hearing and making a determination in relation to a case they are an interested party in.

There are however a number of advantages to this model. As well as helping standards committee save costs, this model will help with the issue of independent members being conflicted out of a stage of the case handling process. As a joint arrangement means that different independent members are involved at each of the different stages, it is less likely that that they will be conflicted out because of their participation at another stage of the process.

Model 3 – Joint committee- full powers

Model 3 would be most appropriate for single purpose authorities such as police or fire authorities. As traditionally these authorities have less contact with the public than local authorities and are the source of fewer complaints, a joint working arrangement would be a more sensible use of resources. However, it is important that in order to ensure that a culture of high standards is developed within the authorities, it is important that the same robustness that would be expected of a single standards committee is applied.

Authorities need to keep in mind that whichever model they choose to adopt, it is the role of the standards committee to inform the ethical arrangements of their authority. It is for this reason that we would not encourage local authorities to adopt model 3. It is only in those circumstances where a local authority is experiencing considerable problems with undertaking the local assessment of complaints that they should consider model 3.

Joint working protocol

Prior to entering into any formal joint working arrangements, authorities will need to sign up to an agreed protocol detailing how the joint committee will operate. Subject to the regulations, the protocol should include the following:

- size of joint committee, number of independent members and independent chair (ie to follow the rules on the size and composition of individual standards committees)
- residual functions retained by standards committees (if any)
- process for dissolution
- process for appointment of members of joint standards committee, including independent members and parish representatives
- process for individual relevant authorities to withdraw from the joint standards committee
- the appointment of a lead monitoring officer for the joint standards committee or outline division of monitoring officers duties between the relevant authority monitoring officers
- payment of allowances
- arrangements for where the Standards Board suspends the functions of the joint standards committee

(Guidance from the Standards Board for England will be given on the content of these arrangements.)

We would appreciate your comments in respect of this potential protocol and the list above. It is also our understanding that the government will consult on joint-working arrangements and the protocol later this year as part of its wider public consultation on the proposed regulations to support the changes to the ethical framework.

Table 1

Model 1. Joint committee – local assessment of complaints and review	Model 2. Joint committee – local assessment review and hearings	Model 3. Joint committee – full powers
<ul style="list-style-type: none"> • Local standards committees retained • Joint committee can establish sub-committees for local assessment and/or review decisions • Sub-committees cover defined geographical areas • Constituent authorities are responsible for the appointment of independent members to the joint committee (they must sign the relevant authority's Code of Conduct) • Monitoring officers may share responsibility for supporting the joint committee or the joint committee may appoint a lead monitoring officer. • Constituent authorities share responsibility for joint committee administration and a joint budget 	<ul style="list-style-type: none"> • Local standards committees retained • Joint committee can establish sub-committees for local assessment, review and hearing decisions • Sub-committees cover defined geographical areas • Constituent authorities are responsible for the appointment of independent members to the joint committee (they must sign the authority's Code of Conduct. The joint committee should agree on which code should apply • Monitoring officers may share responsibility for supporting the joint committee or the joint committee may appoint a lead monitoring officer. • Constituent authorities share responsibility for joint committee administration • Constituent authorities are responsible for the appointment of independent members to the joint committee (they must sign the relevant authority's Code of Conduct) • training 	<ul style="list-style-type: none"> • Replaces local standards committees • Discharges all standards committee functions • Constituent authorities are responsible for the appointment of independent members to the joint committee (they must sign the relevant authority's Code of Conduct) • Monitoring officers may share responsibility for supporting the joint committee or the joint committee may appoint a lead monitoring officer..

DRAFT

December 2007

Local assessment of complaints

Guidance for standards committees and
monitoring officers

DRAFT

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Introduction

This guide is issued by the Standards Board for England to reflect the *Relevant Authorities (Code of Conduct) (Local Determination) (England) Regulations 2008* in respect of local assessment of complaints. The regulations relate to the conduct of authority members deriving from part 10 of the *Local Government and Public Involvement in Health Act 2007*.

The *Local Government and Public Involvement in Health Act 2007* amends the *Local Government Act 2000*, to which this guidance refers.

The regulations set out the framework for the operation of a locally based system for the assessment, referral and investigation of complaints of misconduct by members of authorities. They amend and re-enact existing provisions in the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003*, as amended.

This guide is designed to help members and officers in relevant authorities involved in the assessment of complaints that a member has breached the Code of Conduct. It details each stage of the assessment of complaints and offers effective practice suggestions and a 'toolkit' of useful document templates, that may be adopted or adapted by authorities as required.

The guide is aimed primarily at members of standards committees and monitoring officers, but will also provide a useful reference for all members and officers involved in the assessment of complaints.

The guide applies to:

- district, unitary, county and London borough councils
- English and Welsh police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- passenger transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Each authority must develop effective procedures to fulfill its legislative requirements. Members and officers involved in the assessment of complaints should also take this guide on effective practice into account.

As local circumstances vary greatly, the guide does not prescribe exactly how the system should operate beyond the statutory requirements of the *Local*

Government Act 2000, as amended. The Standards Board for England wishes to encourage authorities to develop good practices appropriate for their own circumstances, provided that these comply with the legal framework. This guidance sets out the issues that authorities need to consider in designing their procedures. It may be read in conjunction with the other sets of guidance the Standards Board for England has produced to advise authorities on the operation of the standards framework under *the Local Government Act 2000*, as amended.

Background

Over 100,000 people give their time as members of authorities. The majority do so with the very best motives and conduct themselves in a way that is beyond reproach. Public perception, however, tends to focus on the minority, who in some way abuse their positions or behave badly. Anyone who considers that a member may have breached the Code of Conduct can make a complaint to that member's local standards committee. Each complaint must then be assessed to see if it falls within the authority's legal jurisdiction, and a decision taken on whether some action should be taken, whether that is an investigation or some other form of action.

When a matter is referred for investigation or other action, it does not mean that the committee assessing the complaint believes that it is true. It simply means that the committee believes that the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.

The process for dealing with matters at a local level should be the same for all members, no matter what political party, if any, or what level of government they represent. It must be fair and be seen to be fair.

Standards committees of district and unitary authorities fulfill the same role in relation to parish and town councils in their area. In this case, standards committees can set up sub-committees to deal with parish and town council matters.

Local assessment of complaints

The assessment of complaints that a member may have breached the Code of Conduct is a new function for authorities, having previously been undertaken centrally by the Standards Board for England.

In order to effectively discharge this function, the standards committee will need to establish a sub-committee which is tasked with the responsibility of assessing new complaints that a member has breached the Code of Conduct (hereafter known as the assessment sub-committee). This committee will need to consist of no less than three members of the standards committee and should be chaired by an independent member.¹

The standards committee will also need to establish a sub-committee which is tasked with the responsibility of reviewing decisions of the assessment sub-committee, where they decide not to take any action on the complaint (hereafter known as the review sub-committee). This committee will also need to consist of no less than three members of the standards committee and should preferably be chaired by an independent member.²

The creation of sub-committees will enable the separate functions involved in the standards framework for authority members to be discharged without conflicts of interest. These functions are:

- The initial assessment of a complaint received by the standards committee.
- Any request a standards committee receives from a complainant to review its decision to take no action in relation to a complaint.
- Any subsequent hearing of a standards committee to determine whether a member has breached the Code of Conduct, and where appropriate impose a sanction on a member.

In order for a standards committees to minimise the potential risk of conflicts of interest that may arise and ensure fairness for all parties a member of a standards committee who has taken part in decision-making on the initial assessment of a complaint, or considered an complaint which has been referred back to the standards committee by a monitoring officer or ethical standards officer, must not be involved in the review of any subsequent request from the complainant to review the committee's decision to take no further action.

¹ Subject to confirmation

² Subject to confirmation

Members of a standards committee who have been involved in the initial assessment of a complaint, or a review of a standards committee's previous decision to take no further action, should not be prohibited from taking part in any subsequent hearing by the standards committee to determine whether that matter constituted a breach of the Code of Conduct and, if so, whether any sanction is appropriate.

Publicising the complaints system

In order to ensure that members of the public are aware of the change of responsibility for handling Code of Conduct complaints and what the process entails, each authority is required to publish a notice detailing where Code of Conduct complaints should be sent after April 2008.

This may be done through an authority's website, advertising in one or more local newspapers, an authority's own newspaper or circular, and through notices in public areas such as local libraries or authority reception areas.

The majority of complaints received are made by members of the public and it is therefore important that the public notice reach as many people as possible. The steps taken by an authority to publicise the process are something that will be considered by the Audit Commission's Comprehensive Area Assessment lines of enquiry – this is currently a draft proposal in the Audit Commission's use of resources Key Lines of Enquiry (KLOE).

A standards committee must also continue to bring to the public's attention the address to which misconduct complaints should be sent on an ongoing basis, as well as alert the public to any changes in those arrangements.

Submission of complaints and accessibility

There are two main ways in which authorities can set up procedures for the submission of complaints that a member has breached the Code of Conduct:

- Authorities may choose to integrate the making of Code of Conduct complaints into the existing corporate complaints framework. This will mean that when a complaint is received, officers of the authority will be able to analyse which of its complaints procedures is the appropriate one and advise the complainant accordingly
OR
- Authorities may choose to develop a separate process for Code of Conduct complaints so the process for such complaints is distinct from all other corporate complaints.

In deciding which option is most appropriate, authorities should recognise that some complainants will not know where to direct their complaint. Some

complaints may also need to be considered through more than one of an authority's complaint processes. However, certain issues within this may also need to be routed to the standards committee or its assessment sub-committee if they involve individual member conduct; for example if there is an alleged failure on the part of a member to declare an interest. Officers dealing with incoming complaints will therefore need to be alert to a complaint that a member has breached the Code of Conduct.

If a complaint specifies or appears that it is in relation to the Code of Conduct then it must be passed to the assessment sub-committee for consideration.

Where an existing complaint system is used, complaint forms may need to be amended to take into account complaints under the Code of Conduct. Alternatively, authorities choosing to develop a separate submission of Code of Conduct complaints may produce a designated complaint form for these.

Without a designated complaint form, authorities may find it sufficient to give clear guidelines as to the information that complainants need to provide. This should include:

- the complainant's name, address and other contact details
- complainant type, for example, member of the public, fellow councillor or officer
- who they are complaining about and the authority or authorities that the member belongs to
- details of the alleged misconduct, including, where possible, dates, witness details and other supporting information
- equality monitoring data if applicable, for example nationality of the complainant
- a warning that the complainant's identity will normally be disclosed to the member the complaint has been made about (although in exceptional circumstances, if it meets relevant criteria and at the discretion of the standards committee, this information may be withheld - see *the section of this guidance on anonymity*).

Complaints must be submitted in writing. This includes facsimile and electronic submissions. However, the requirement for complaints to be submitted in writing should be read in conjunction with the Disability Discrimination Act 2000 and the requirement to make reasonable adjustments. For example, to assist a complainant with a disability that prevents them from making their complaint in writing, authorities may need to take down the complaint verbally and then

produce a written copy for the complainant, or the complainant's advocate, to agree.

Authorities should also consider what support to make available to complainants where English is not the complainant's first language.

Pre-assessment enquiries

Before a new Code of Conduct complaint is presented to the assessment sub-committee, officers may take steps to gather readily obtainable factual information that is needed to make an informed decision.

This may include obtaining a copy of a declaration of acceptance of office form, minutes of meetings, copies of a member's entry in the register of interests, or information from Companies House or the Land Registry. Officers may also contact complainants for clarification of their complaint.

Pre-assessment enquiries do not extend to interviewing potential witnesses, the complainant, or the subject member, as this may prejudice any subsequent investigation.

Receiving complaints³

After receipt of the complaint, the assessment sub-committee must clearly explain to the complainant what happens next.

The assessment sub-committee has a maximum of **xxxx** days to reach a decision on what should happen with the complaint, and this must be communicated to the complainant.

Such a timescale also applies with regard to decisions made by the standards committee in respect of any complaints which are referred back to the standards committee by a monitoring officer or ethical standards officer.

Withdrawing complaints

There may be occasions when the complainant requests to withdraw their complaint prior to the assessment sub-committee having made a decision on it.

In these circumstances, the committee will need to decide whether to grant the request. It would be helpful if the committee had a framework by which to consider such requests. The following considerations may apply:

³ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member or an associate to withdraw the complaint?

Notification requirements⁴

In most circumstances, the assessment sub-committee must ensure that a written summary of the complaint is sent to the member who is the subject of the complaint as soon as reasonably practicable, and no later than **xxxx** days after its receipt.

There may occasionally be circumstances where it may prejudice a case if a member is informed straight away of a complaint made against them. This may happen where there is the real possibility of intimidation of the complainant or witnesses by the subject member or the early disclosure of the complaint may result in evidence being compromised.

In such a circumstance, the monitoring officer will need to carry out a risk assessment to determine whether the risk of the case being prejudiced by the member being informed of the complaint straight away may outweigh the fairness of immediate notification to the member.

Where the standards committee considers it is appropriate, it is able to provide the summary of the complaint to the subject member after the monitoring officer has interviewed the complainant and any necessary witnesses. In some cases, where the standards committee considers that the danger of intimidation is particularly severe, the committee may decide that it would not be appropriate to reveal the name of the complainant or witnesses to the subject member until the conclusion of the investigation.

After making a decision on a complaint, the assessment sub-committee should give written details of its decision to the subject member as soon as reasonably practicable and no later than **xxxx** days from the date of decision.

⁴ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

Where a decision to take no further action is subject to a request for a review by the complainant, the assessment sub-committee must ensure that the subject member is notified in writing.

The assessment sub-committee must also ensure that the complainant is notified of its decisions in writing.

Access to meetings⁵

Initial assessment decisions and any subsequent review of decisions to take no further action on a complaint must be conducted in closed meetings and should not be subject to notice and publicity requirements under Part VA of the *Local Government Act 1972*.

Such meetings may be considering unfounded and potentially damaging complaints about members which it would not be appropriate to make available to the general public. As such, a standards committee undertaking its role in assessment or review of a complaint should not be subject to rules regarding notices of meetings, circulation of agendas and documents, public access to meetings and validity of proceedings, as set out in the *Relevant Authorities (Standards Committees) Regulations 2001*, as amended.

A standards committee's function of reviewing a decision to take no further action regarding a complaint of misconduct should not be subject to access to information rules in respect of local government committees.

Authorities must have regard to their requirements under the Freedom of Information and Data Protection Acts.

Initial assessment decisions

The standards committee or its assessment sub-committee is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:

- refer the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the *Local Government Act 2000*, as amended, may be another authority⁶
OR

⁵ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

⁶ Detail to be expanded

- refer the complaint to the Standards Board for England
OR
- decide that no action should be taken in respect of the complaint

Assessment criteria

Before assessment of a complaint begins, the assessment sub-committee should be satisfied that it meets the following tests:

- It is a complaint against one or more named members of the authority or an authority covered by the standards committee.
- The named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time. (An exception to this is likely where the member has been convicted whilst in office of a criminal offence that occurred before they became a member of the authority).
- The complaint, if proven, would be a breach of the Code of Conduct under which the member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code of Conduct and the complainant must be informed that no further action will be taken in respect of the complaint.

The standards committee or its assessment sub-committee will need to develop criteria by which it assesses new complaints and decides what action, if any, to take. These criteria should reflect local circumstances and priorities and be simple, clear and open. They should ensure fairness for both the complainant and the subject member. Where authorities are operating joint arrangements for the assessment of complaints, each authority should consider adopting the same criteria.

Assessing all new complaints by established criteria will also protect the committee members from accusations of bias. Assessment criteria can be reviewed and amended as necessary.

It is important that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately. At the same time deciding to investigate a complaint or to take some other action will incur resources, both from the public purse and in the time of elected and independent members. Authorities need to take into account the public benefit in investing in complaints which are less serious, politically motivated, malicious or vexatious.

Assessment criteria should be adopted which take this into account so that authorities can be seen to be treating all complaints in a fair and balanced way. These are often, although by no means always, easy to decide.

Authorities should decide on criteria for accepting a complaint or for deciding to take no further action on it. To assist in developing these criteria, a standards committee or assessment sub-committee may want to ask the following questions on the operation of the local framework, which will provide a good foundation for developing criteria in the context of local knowledge and experience:

1. Is this complaint too trivial to warrant further action?
Yes = assessment sub-committees may consider incorporating a criterion such as:
“The matter is not considered to be sufficiently serious to warrant any action.”
2. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
Yes = assessment sub-committees may consider incorporating a criterion such as:
“The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that an investigation was not warranted.”
3. Does the complaint appear to be malicious, politically motivated or tit-for-tat?
Yes = assessment sub-committees may consider incorporating a criterion such as:
“The matter appears to be malicious or politically motivated or tit-for-tat and it was decided that further action was not warranted”.
4. Has the complaint been the subject of an investigation or inquiry either relating to the Code of Conduct or by other regulatory authorities including police prosecutions and previous consideration by the Standards Board for England or the standards committee of another authority?
Yes = assessment sub-committees may consider incorporating a criterion such as:
“The matter complained of has already been subject to a previous investigation or inquiry and there is nothing further to be gained by another investigation or inquiry”.

5. Does the assessment sub-committee want, normally, only to deal with complaints if they occurred after the authority adopted the 2007 version of the Code of Conduct?

Yes = assessment sub-committees may consider incorporating a criterion such as:

“Except in the most serious of cases, complaints that disclose a potential breach under the 2001 Code of Conduct but would not constitute a breach under the 2007 Code of Conduct are unlikely to be referred for investigation or further action”.

6. Has the complainant submitted enough information to satisfy the assessment sub-committee that the complaint should be referred for investigation or other positive action? Does the assessment sub-committee want to invite the complainant to submit further information in support of the complaint for the assessment sub-committee to consider afresh? Does the assessment sub-committee want to indicate the information that should be submitted?

Yes = assessment sub-committees may consider incorporating a criterion such as:

“The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation so unless, or until, further information (as detailed below) is received, the authority is taking no further action on this complaint. “

7. Is the complaint about someone who is no longer a member or co-opted member of the authority but is a member or co-opted member of another authority? If so, does the assessment sub-committee wish to refer the complaint to the monitoring officer of that other authority?

Yes = assessment sub-committees may consider incorporating a criterion such as:

“Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to that authority to consider”.

The assessment criteria that the authority adopts should be made publicly available.

Referral for investigation

When the assessment sub-committee considers a new complaint, it can decide that a complaint should be referred for investigation. It will also need to consider

whether the referral for investigation should be to the authority's monitoring officer or to the Standards Board for England.

The monitoring officer must write to the following people within **xxxx** days informing them of the decision and advising who will be responsible for conducting the investigation:

- the person making the complaint
- the subject member
- the monitoring officer of any other authority of which the subject member is also a member
- if applicable, the clerk of the parish or town council

If the assessment sub-committee decides to refer the complaint to the Standards Board for England, the notification of this referral to the parties involved should set out that the Standards Board for England may decline to investigate the matter and refer the matter back to the assessment sub-committee to take forward.

Referral for other action⁷

When the assessment sub-committee considers a new complaint, it can decide that some other action should be taken which is not an investigation, and can refer the matter to the monitoring officer to consider this. The suitability of other action is dependent on the nature of the complaint and will require a risk assessment to be carried out by the standards committee.

Certain complaints that a member has breached the Code of Conduct will lend themselves to being resolved in this way. Taking the decision to deal pro-actively with the matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious, or which indicate a wider problem at the authority concerned. It can be the simplest and most flexible way of getting the matter resolved, helping the authority to work more effectively and avoiding similar complaints in the future.

Assessment sub-committees can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the members who are the subject of the complaint. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and may produce a better result. The action decided upon may

⁷ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

also have the benefit of preventing the same thing happening again. If the assessment sub-committee later receives a complaint that reflects similar concerns that were dealt with in this way, then the fact of the other action may be taken into consideration in assessment of the new complaint.

Assessment sub-committees are encouraged to consider other action on a pragmatic basis, taking into account the needs of their own authority and of the parish and town councils which they serve. Everyone involved in the process will need to understand that the purpose of other action is not to find that the member has or has not breached the Code of Conduct. It is a remedial action to help the authority function better, and the decision is made as an alternative to an investigation.

Complaints that have been referred to the monitoring officer for other action should not then be referred back to the standards committee if the other action is perceived to have failed. This is unfair to the subject member, and a case may be jeopardised if it has discussed as part of a mediation process. There is also a difficulty with defining 'failure' in terms of the other action undertaken.

In exceptional circumstances, however, where further matters have come to light which make a matter more or less serious than originally thought, or there has been a change in the circumstances of the subject member, the monitoring officer is able to refer a matter back to the standards committee for consideration. Examples of a change in circumstances that may justify this include serious illness or resignation, or where a case is more serious than originally thought.

Standards committees may find it helpful to introduce a requirement on the parties involved to confirm in writing that they will co-operate with the process. However authorities choose to take this forward the important thing is that all parties are clear about what is, and what is not, going to happen in response to the complaint.

Standards committees may find that resolving a matter in this way is relatively quick and straightforward compared to a full investigation. The length of time it is expected to take should be part of a defined action plan, which should also set out how often the standards committee wants to be updated on progress by the monitoring officer or other officer assigned to take forward the action. The plan should also set out how the complainant will be informed of the outcome of the action.

Reviews of 'no further action' decisions

If the assessment sub-committee decides that no action should be taken in respect of a complaint, the monitoring officer of the authority must write to the

following people within **xxxx** days informing them of the decision and the reasons for it:

- the person making the complaint
- the subject member
- the clerk of the parish council (if applicable)

The complainant should also be advised of their right to ask for the decision to be reviewed and that they can exercise this right by writing to the standards committee not later than 30 days after the date of the notice of the assessment sub-committee's decision.

The review must be, and must be seen to be, independent of the original decision. Members of the assessment sub-committee who made the original decision must not take part in the review of that decision. A separate review sub-committee, made up of members of the standards committee, should consider the review.

The review sub-committee should not decide to overturn a decision where the decision is one of judgement and the review sub-committee simply reaches a different decision on the complaint to that of the assessment sub-committee. In reviewing the decision, the review sub-committee should consider the following issues:

- Did the assessment sub-committee follow its procedures properly?
- Was the decision reasonable? For example, were the criteria for considering complaints properly applied?
- Has the complainant provided further information in support of the complaint which was not available to the initial assessment sub-committee and which would meet criteria for investigation or other action?

When making a decision on a complaint, the review sub-committee will need to adopt the same approach as the assessment sub-committee, developing criteria by which it assesses complaints and deciding what action, if any, to take.

The review sub-committee has the same options available to it as the assessment sub-committee. It may:

- refer the complaint to the monitoring officer for investigation or some other action

OR

- refer the complaint to the Standards Board for England for investigation

OR

- uphold the original decision by deciding that no action should be taken..

Whatever decision the review sub-committee reaches, it must write to the member about whom the complaint was made, and to the complainant, informing them of this decision and the reasons for the decision.

Investigations and referrals back to the standards committee by the Standards Board for England

Referral to the Standards Board for England

The Standards Board for England expects standards committees to deal with the investigation of complaints concerning members of their authorities and parish and town councils in most cases. However, there will sometimes be issues in a case which make it difficult for the standards committee to deal with a case fairly and speedily. In such cases, the assessment sub-committee may wish to refer a complaint to the Standards Board for England to be investigated by an ethical standards officer.

If the assessment sub-committee believes that a complaint should be investigated by the Standards Board for England, it must take immediate steps to refer the matter.

The Standards Board for England may accept cases for investigation by an ethical standards officer, may take no action or may refer cases back to the standards committee which referred them. In deciding which of these actions to take, the Standards Board for England will be principally concerned to support the ethical framework nationally and locally. To do that, the Standards Board for England needs to ensure that complaints are dealt with knowledgeably, fairly and within a reasonable period of time.

The Standards Board for England will take the following matters into account in deciding which cases it should accept:

1. Does the standards committee believe that the status of the member or members, or the number of members, about whom the complaint is made, would make it difficult for the standards committee to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the authority's cabinet?

2. Does the standards committee believe that the status of the complainant or complainants would make it difficult for the standards committee to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the authority's cabinet, the chief executive or the monitoring officer or other senior officer?
3. Does the standards committee believe that there is a potential conflict of interest of so many members of the standards committee that it could not properly monitor the investigation of this complaint?
4. Does the standards committee believe that there is a potential conflict of interest of the monitoring officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?
5. Is there is substantial governance dysfunction in the authority or its standards committee?
6. Is there is a complaint of long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority?
7. Will the complaint require substantial amounts of evidence beyond that available from documents of the authority, its members or officers?
8. Does the complaint raise significant or unresolved legal issues?
9. Is the authority or its standards committee facing exceptional local problems for which it would be unreasonable for local provision to be made for an investigation?
10. Are there other exceptional circumstances which would prevent the authority investigating the complaint competently, fairly and in a reasonable period of time?

The Standards Board for England will normally inform the monitoring officer within **xxxx** days whether it will accept a case or will refer it back for local determination, with reasons for doing so. There is no appeal mechanism against the decision of the Standards Board for England in this instance.

Referral back to a standards committee from the Standards Board for England⁸

If the Standards Board for England declines to investigate a complaint referred to it, it will normally send it back to the standards committee of the authority to decide what action should be taken next. The standards committee must again take an assessment decision and has a maximum of **xxxx** days to reach a decision.

⁸ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

This may be a decision not to take any further action, to refer the matter for local investigation or to refer the matter for some other form of action. As the standards committee initially decided that the matter was serious enough to be referred for investigation by the Standards Board for England, it is likely that the view will be maintained that the matter should be investigated and so the case will be referred to the monitoring officer of the authority to carry out the investigation.

If, however, the circumstances of the complaint have changed since the assessment sub-committee's original decision, it may be reasonable to take a different decision. This decision must again be communicated to all involved parties in the same way the original decision was.

If the Standards Board for England declines to investigate a case referred to it, it may, if it is appropriate in the circumstances, offer guidance to the standards committee which may assist with the committee's decision.

In exceptional circumstances, the Standards Board for England may decide to take no further action on a complaint referred to it by a standards committee. This is likely to be where circumstances have changed so much that there would be no benefit arising from investigation or other steps, or because the Standards Board for England does not consider that the complaint discloses a breach of the Code of Conduct.

Handling complaints

Multiple and vexatious complaints

An authority may receive a number of complaints from different complainants about the same matter. Authorities should have procedures in place to ensure that they are dealt with in a manner that is a practical use of time and resources.

If a number of complaints about the same matter are to be considered by the assessment sub-committee at the same meeting, an officer should be asked to present one report and recommendation that draws together all the relevant information and highlights any substantively different or contradictory information. However, the assessment sub-committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.

Unfortunately, a small number of people abuse the complaints process. Authorities may want to include criteria within the procedure for assessment of complaints to deal with this abuse, for example by bringing it within the scope of any existing authority policies on vexatious or persistent complaints or complainants. Vexatious or persistent complaints or complainants can usually be

identified through the following patterns of behaviour which may become apparent in the complaints process:

- repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident
- repeated complaints that disclose no potential breach of the Code of Conduct
- where it seems clear that there is an ulterior motive for a complaint or complaints
- where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted

However, whilst authorities may reduce the resources expended by, for example, allowing a vexatious complainant to deal with only one named officer or refusing email communication, every complaint that a member may have failed to comply with the authority's Code of Conduct must be considered. By building into the referrals criteria a statement that malicious or tit-for-tat complaints will not be investigated, authorities will be able to refuse to investigate or take other action on such complaints if appropriate.

Case history

Records of all complaints and their outcomes should be retained in line with the authority's records management policy. This policy may need to be amended to reflect the authority's new responsibilities in the local assessment of complaints.

Documents that relate to complaints that the assessment sub-committee decided not to investigate should be kept for a minimum of 12 months after the outcome of any review that has been concluded. This is in case of any legal challenge and to meet monitoring requirements for the Standards Board for England.

Authorities should keep records relating to complaints referred for investigation for at least xxx after the outcome of any hearing or result of further action is known.

Authorities should keep details of cases in a format that is easy to search by complainant name, by member name and by authority, where an authority has parishes. Authorities may also want to search by paragraph of the authority's Code of Conduct. Old cases may be relevant to future complaints if they show a pattern of behaviour. Authorities will also be able to identify complaints about the same matter that have already been considered by the standards committee.

Authorities will need to consider records management alongside the law on keeping records of committees.

Anonymity

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the assessment sub-committee. The assessment sub-committee should consider the request for anonymity alongside the substance of the complaint itself.

Authorities should develop criteria by which the assessment sub-committee will consider requests for anonymity. These may include the following:

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- The complainant is an officer who works closely with the subject member and they are afraid of suffering a disadvantage to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle blowing policy).
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed (in such circumstances, standards committees may wish to request medical evidence of the complainant's condition).

When considering requests for anonymity, standards committees should also consider whether it is possible to investigate the complaint without making the complainant's identity known.

If a standards committee decides to refuse a request by a complainant for anonymity, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to remain anonymous and the assessment sub-committee will need to decide where the balance lies in the particular circumstances of each complaint.

Authorities should publish a statement setting out how anonymous complaints will be dealt with. The assessment sub-committee may decide that an anonymous complaint should only be referred for investigation or some other action if it is exceptionally serious or significant. If so, this needs to be included in the committee's assessment criteria.

Conflict issues⁹

Process conflicts

Any member of the standards committee who was involved in an assessment decision at first instance or following a referral back for another assessment decision, cannot be involved in a review of that same decision.

A member of the standards committee who was involved in an assessment decision at first instance or following a referral back for another assessment decision, or a review of an assessment decision, can be a member of the committee that hears and determines the complaint at the conclusion of an investigation. The assessment decision relates only to whether the complaint discloses something that needs to be investigated. It does not indicate that the conduct did or did not take place and that it was or was not a breach of the Code of Conduct. The standards committee hearing the case will decide whether the Code of Conduct has been breached and what, if any, sanction should apply.

The assessment process must be conducted with impartiality and fairness. There may be cases where it would not be appropriate for a member or officer to be involved in the process, even if not disqualified from doing so by law. Any member or officer who is a complainant, a potential witness or victim, or who is closely associated with someone who is a complainant, a potential witness or victim relating to a complaint, should not participate in the assessment process.

Where a member of a standards committee is involved with an assessment decision at first instance in a case that is referred to the Standards Board for England or to the authority's monitoring officer, and that case is subsequently referred back to the standards committee for reconsideration, the member may resume involvement in the assessment process.

A member of a standards committee who is involved at these assessment stages of the process, however, either in the first instance or following a referral back from the Standards Board for England or monitoring officer, should not participate in the review of that decision.

Assessment sub-committees and review sub-committees should be chaired by independent members in addition to an independent member chairing the standards committee. When dealing with complaints about members of parish and town councils, a standards committee or sub-committee must contain at least one parish representative.

Authorities should ensure that their standards committee has sufficient independent members, and parish representatives where applicable, for the

⁹ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

framework to operate effectively allowing for circumstances where members are unable to participate for reasons of conflict of interest.

Personal conflicts

Members and officers should take care to avoid any personal conflicts of interest arising in participation in the consideration of a complaint that a member may have breached the Code of Conduct. The provisions of the authority's Code of Conduct relating to personal and prejudicial interests apply to standards committee members in meetings and hearings.

Anyone who has a prejudicial interest or who is involved with a complaint in any way should not take part in the assessment or review sub-committee. Decisions made in an assessment or review sub-committee should not be influenced by anything outside the papers and advice put before the member in that committee. The member should not discuss complaints with others who are not members of the committee which deals with the assessment or review, and discussions between members should only take place at official meetings.

Authorities should have clear guidelines in place on when a member or officer should not take part in the assessment of a complaint because of personal interests. These may include consideration of the following:

- the complaint is likely to affect the well-being or financial position of that member or officer or the well-being or financial position of a friend, family member or person with whom they have a close association
- the member or officer is directly or indirectly involved in the case in any way
- a family member, friend or close associate of the member or officer is involved in the case
- the member or officer has an interest in any matter relating to the case, for example it concerns a member's failure to declare an interest in a planning application in which the member or officer has an interest, even though the outcome of any investigation or other action could not affect the decision reached on the application

Officer conflicts

An officer who has been previously involved in advising a member who is the subject of a complaint, or who has advised the complainant about the issues giving rise to a complaint, should consider whether they can properly take part in supporting the assessment process or the final hearing of that complaint, or whether their prior involvement has been such that it may give the perception of

bias to others involved and therefore whether they should stand aside. Officers should take legal advice if they have any doubts.

If the monitoring officer is unable to take part in the assessment process, their role should be delegated to another appropriate officer of the authority, such as the deputy monitoring officer. Similarly, the role of any other officer who is unable to take part in the assessment process should be taken by another officer. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities to make sure that an experienced officer is available to deputise for the monitoring officer if they are unable to take part in the assessment process.

Complaints about dual-hatted members¹⁰

The introduction of the local assessment of complaints may raise an issue with regards to what should happen if a complaint is made against an individual who is a member of more than one authority (known as a dual-hatted member) and, as such, may have failed to comply with more than one authority's Code of Conduct. As an example, an individual who is a member of a district council, a police authority and a parish council may be the subject of complaints that they have breached the Code of Conduct of all three authorities. As such, it would be possible for both the standards committee of the district council and the standards committee of the police authority to receive complaints against the member.

Decisions on which standards committee should deal with a particular complaint must be taken by standards committees themselves, following discussion with each other and taking advice as necessary from the Standards Board for England. This will enable a cooperative approach to be adopted, including the sharing of knowledge and information about the local circumstances, and cooperation in the carrying out of investigations to ensure effective use of resources.

Two standards committees might, for example, consider it would be appropriate for both of them to consider similar complaints or the same complaint against the same individual, and even to reach a different decision on the matter. Standards committees are encouraged to take into account local factors which affect their authorities and communities.

¹⁰ This section is subject to Regulations and will be redrafted as necessary to reflect the content of the Regulations

Local assessment of complaints: toolkit

Appendix A

Template notice for publicising the local Code of Conduct complaints process

Changes to the complaints procedure

From 1 April 2008 the responsibility for considering complaints that a member has breached the Code of Conduct is shifting to authorities.

What this means to you

After 1 April 2008 if you want to complain about the conduct of a member of XXX [or one of our parish councils] you must submit your complaint to:

Chair of the Assessment Sub Committee
[insert authority address]

Until 1 April 2008 the Standards Board for England remains responsible for carrying out this function. You may obtain further information from their website at www.standardsboard.gov.uk

Appendix B

Template acknowledgement letter to complainant

Dear XXXX

Ref: XXXX

I acknowledge receipt of your letter dated XXXX regarding XXXX [of XXXX]. We received your complaint on XXXX.

The assessment sub-committee will now meet to decide what action should be taken in relation to your complaint. You will not have the opportunity to attend, as it is not a public meeting. It is therefore important that you have provided all the information that you want taken into account when the committee makes its decision.

The committee can reach one of the following three decisions:

- refer the allegation to the monitoring officer of the authority concerned for investigation or some other action, for example, mediation or training
OR
- refer the allegation to the Standards Board for England
OR
- decide that no action should be taken in respect of the allegation

If they decide that no action should be taken, they will give reasons for this and explain your right to request a review of the decision.

The committee aims to make this decision within XXXX days of the date we received your complaint. You will be informed of the decision in writing.

We would like to remind you that your name and details of your allegation will be revealed to the member you have complained about. We can only withhold the identity of a complainant in exceptional circumstances. Please contact us on receipt of this letter if you are concerned about your identity being disclosed.

If you have any queries about the process, please contact us.

Yours sincerely

Appendix C

Template decision notice – referral for further action

Decision Notice

Reference

The Complaint

On [date], the Standards (Assessment) Sub-Committee of this authority considered a complaint from [*name of complainant*] concerning the alleged conduct of [name of member], a member of [*this authority/XXXX parish council/any other authority*]. We have set out a general summary of the complaint below:

[*Summarise complaint*]

DRAFT

Decision

In accordance with Section 57A(2) of the Local Government Act 2000 as amended, the sub-committee decided to refer the allegation to the Monitoring Officer for [*delete those which do not apply* investigation by MO/ investigation by SBE/description of other action]

Potential breaches of the Code of Conduct identified

We have identified below the paragraphs of the Code of Conduct which may apply to the alleged conduct. [*for investigations only: The investigator will determine which paragraphs are relevant during the course of the investigation*]

The Code of Conduct 2007

- Failing to treat others with respect
- Acting in a way that may cause the authority to breach an equality enactment
- Bullying
- Intimidating, or attempting to intimidate a person involved in an allegation against you
- Compromising the impartiality of those who work for, or on behalf of, the authority
- Disclosing confidential information
- Bringing office or authority into disrepute
- Using position as a member improperly to confer or secure an advantage or disadvantage
- Not using the resources of the authority in accordance with their requirements
- Disregarding advice when reaching decisions
- Failing to give reasons for decisions
- Failing to declare a personal interest
- Having a prejudicial interest and failing to act appropriately
- Failing to register interests

We notify all concerned parties in writing once we have assessed a complaint. This decision notice is sent to the person or persons making the allegation, the member against whom the allegation was made [*and the clerk to the parish or town council.*]

What happens now?

[*Delete those which do not apply*]

- Investigation - Please see the attached guide on the investigations process
- Referral to the Standards Board for England for investigation – The committee has referred the complaint to the Standards Board who will now

decide whether or not to carry out the investigation into this matter. We will write to you again if the Standards Board refuses and refers the allegation back to the standards committee.

- Other action – *describe to the complainant what, if any, allowance your authority makes for their involvement and/or notification in the other action*

Signed **Date**

Chair

DRAFT

Appendix D

Template decision notice – no further action

Decision Notice

Reference

The Complaint

On [date], the Standards (Assessment) Sub-Committee of this authority considered a complaint from [*name of complainant*] concerning the alleged conduct of [name of member], a member of [*this authority/XXXX parish council/any other authority*]. We have set out a general summary of the complaint below:

[*Summarise complaint*]

Decision

In accordance with Section 57A(2) of the Local Government Act 2000 as amended, the sub-committee decided that no action should be taken on the allegation.

Reasons for decision

[*include reasons for decision*]

We notify all concerned parties in writing once we have assessed a complaint. This decision notice is sent to the person or persons making the allegation, the member against whom the allegation was made [*and the clerk to the parish or town council.*]

Right of review

At the request of the complainant, the Standards Committee can review and change a decision not to refer an allegation for investigation or other action. A different sub-committee to those involved in the original decision will undertake the review.

A request for a review has to be made in writing. We must receive the complainant's written request within 30 days of the date of this notice, explaining in detail on what grounds the decision should be reviewed.

If we receive a request for a review, we aim to deal with it within XXXX of receipt.
We will write to all the parties mentioned above, notifying them of the outcome.

Signed **Date**

Chair

DRAFT

Appendix E

Template covering letter for decision notice to complainant – referral for further action

Dear XXXX

Ref: XXXX

I refer to your recent allegation of a breach of the Code of Conduct.

The decision of the assessment sub-committee is set out in the attached notice, which also explains the relevant procedures.

Yours sincerely

XXXX

DRAFT

Appendix F

Template covering letter for decision notice to complainant – no further action

Dear XXXX

Ref: XXXX

I refer to your recent allegation of a breach of the Code of Conduct.

The decision of the assessment sub-committee is set out in the attached notice, which also explains the relevant procedures including your right to seek a review of the decision.

If you decide to exercise this right, we must receive your written request and any supporting information by XXXX.

Yours sincerely

XXXX

DRAFT

Appendix G

Template covering letter for decision notice to member

Dear Councillor XXXX

Ref: XXXX

The assessment sub-committee met on XXX to consider the complaint made against you under the Code of Conduct.

The attached notice summarises the complaint and sets out the decision.

Yours sincerely

XXXX

DRAFT

Appendix H

Template review response letter – decision upheld

Dear XXXX

Ref: XXXX

Thank you for your letter of XXXX asking the standards committee to review the handling of your complaint. The review sub-committee met on XXXX to reconsider the complaint and they have carefully considered your further comments.

It was decided to uphold the decision not to take any action on your complaint.
[Add further explanation if desired].

I realise that you may be disappointed with the results of the review. However, this is now the end of the process and there is no further right of appeal against this decision.

Yours sincerely

Chair

DRAFT

Appendix I

Template review response letter – decision overturned

Dear XXXX

Ref: XXXX

Thank you for your letter of XXXX asking the standards committee to review the handling of your complaint. The review sub-committee met on XXXX to reconsider the complaint and they have carefully considered your further comments.

Decision

It was decided to refer the allegation to the Monitoring Officer for [*delete those which do not apply* investigation by MO/ investigation by SBE/description of other action]

DRAFT

Potential breaches of the Code of Conduct identified

We have identified below the paragraphs of the Code of Conduct which may apply to the alleged conduct. *[for investigations only: The investigator will determine which paragraphs are relevant during the course of the investigation]*

- Failing to treat others with respect
- Acting in a way that may cause the authority to breach an equality enactment
- Bullying
- Intimidating, or attempting to intimidate a person involved in an allegation against you
- Compromising the impartiality of those who work for, or on behalf of, the authority
- Disclosing confidential information
- Bringing office or authority into disrepute
- Using position as a member improperly to confer or secure an advantage or disadvantage
- Not using the resources of the authority in accordance with their requirements
- Disregarding advice when reaching decisions
- Failing to give reasons for decisions
- Failing to declare a personal interest
- Having a prejudicial interest and failing to act appropriately
- Failing to register interests

A copy of this letter has been sent to the person or persons making the allegation, the member against whom the allegation was made *[and the clerk to the parish or town council.]*

What happens next?

[Delete those which do not apply]

- Investigation - Please see the attached guide on the investigations process
- Referral to the Standards Board for England for investigation – The committee has referred the complaint to the Standards Board who will now decide whether or not to carry out the investigation into this matter. We will write to you again if the Standards Board refuses and refers the allegation back to the standards committee.
- Other action – *describe to the complainant what, if any, allowance your authority makes for their involvement and/or notification in the other action*

Yours sincerely, **Chair**

Appendix J

Proposed additional toolkit documents

- Flow chart of local assessment process
- Template complaint form
- Template letter to member that complaint has been received
- Template decision notice – further information requested
- Template referral notice for request for Standards Board for England investigation
- Template decision notices for second decision following Standards Board for England refusal of investigation
- Template review request acknowledgement letter
- Template letter to member that request for review has been received
- Template terms of reference for assessment sub-committee and review sub-committee

December 2007



Local investigations

Guidance for standards committees and
monitoring officers

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Guidance for monitoring officers on investigations and alternative action in relation to allegations referred to them by standards committees

About this guide

This guide provides information on the *Relevant Authorities (Code of Conduct)(Local Determinations)(England) Regulations 2008*, which set out the framework for referring complaints of misconduct for investigation.

In accordance with the regulations anybody who has had a case referred to them by a standards committee must take this guidance into account. In addition, they must follow the regulations and have effective procedures in place for conducting investigations and determinations.

This guide is for monitoring officers and anyone nominated by a monitoring officer to carry out investigations or alternative actions in:

- district, unitary, metropolitan, county and London Borough councils;
- the Greater London Authority;
- police authorities;
- fire authorities (including fire and civil defence authorities);
- the Broads Authority;
- national park authorities;
- the Common Council of the City of London;
- the Council of the Isles of Scilly.

It also covers police authorities in Wales. However, the Commissioner for Local Administration in Wales handles allegations of misconduct about members of Welsh police authorities. For this reason, references to standards committees within this guide should be read as the Commissioner for Local Administration in Wales, and references to The Adjudication Panel for England should be read as the Adjudication Panel for Wales.

Referring allegations

The *Local Government Act 2000* as amended by section 57A of the *Local Government and Public Involvement in Health Act* provides for standards committees to refer to monitoring officers complaints that a member has breached the Code of Conduct for investigation or other action.

When referring a complaint, the standards committee will forward a copy of the complaint letter, along with any other significant information that they consider appropriate.

Disclosure of information

The information that a monitoring officer obtains during the course of a local investigation is covered by section 63 of the Act, therefore you must treat this information as confidential until the investigation is completed. (*This is pending clarification*).

When a standards committee refers an allegation for investigation or alternative action, in addition to sending it to you, they will notify the member who is the subject of the allegation, the person who made the complaint, and the clerk of any relevant town or parish council if the subject member is a town or parish councillor.

Regulation xx states that you must also inform these parties when you receive a matter for investigation or alternative action (*this may need revising depending on final regulations*). When doing so you should explain to them what will happen next.

Conducting your investigation or alternative action

When carrying out an investigation or alternative action, you should be aware at all times of your obligations under the *Data Protection Act 1998*, the *Human Rights Act 1998* and other relevant legislation.

We have published a separate toolkit for conducting investigations or alternative actions as an appendix to this guidance. The toolkit is not statutory guidance but practical information that you may find helpful.

Evidence of new breaches:

During the course of an investigation, you may uncover evidence of conduct by members that breaches the Code of Conduct but extends beyond the scope of the investigation referred to you.

Your powers relate only to the allegation that you have been given. If you uncover evidence of a possible breach that does not directly relate to the investigation, you should explain to the person from whom you obtained the information that you are unable to investigate it as part of your existing investigation and state that they may wish to make a separate complaint to the relevant standards committee. (*this may be subject to final regulations*)

Referring cases back to standards committees

During the course of an investigation, circumstances may arise that prompt you to ask the standards committee to take the case back from you. For example, evidence is uncovered

that suggests a case is more or less serious than originally thought so that, had the standards committee been aware of the evidence, it might have made a different decision on how the case should be treated.

When you request an investigation to be referred back to the standards committee, you must state in writing to the standards committee the reasons why you believe it should be referred back. All requests should be made prior to the completion of your investigation.

You must notify the member who is the subject of the allegation and the complainant of a decision to refer the allegation back to the standards committee and provide time scales within which the matter will be dealt with.

Confidentiality

We appreciate that it may be difficult at times to ensure complete confidentiality about an investigation within your authority. Even so, during your investigation you should treat the information that you gather as confidential. This will help to ensure that your investigation is seen as fair. Maintaining confidentiality reduces the risk of evidence being viewed as biased, and preserves the integrity of the investigation. (The fact that an investigation is being conducted does not need to remain confidential.)

We recommend that you also ask the people you interview, and anyone else aware of the investigation, to maintain confidentiality. You should remind members of their obligations under paragraph 4(a) of the Code of Conduct regarding the disclosure of information that they receive in confidence.

You should not disclose information obtained in an investigation unless:

- The disclosure will assist ethical standards officers to perform their statutory functions;
- The disclosure will assist the monitoring officer to perform his or her statutory functions;
- You have permission from the person to whom the information relates to disclose it;
- The information has already lawfully been made public;
- The disclosure is made for the purposes of criminal proceedings in the UK.

Any draft report that you issue on the outcome of the investigation should be marked as confidential, to preserve the integrity of any further investigation that you may need to undertake. After the hearing final reports may be made available on request provided that confidential or exempt information as defined by part VA of the *Local Government Act 1972* has been removed.

Information about confidentiality in relation to standards committee hearings is included in our guidance, *standards committee hearings and determinations guidance*.

Reports

Producing draft and final reports

When you have concluded your investigation, you should consider whether to produce a draft report before your final report. A draft report is issued to the parties in the

investigation for review and comment, giving you the opportunity to check facts and ensure that all aspects of the case have been explored in sufficient detail.

When deciding whether to produce a draft report, ask yourself:

- Are the facts in the matter complex or ambiguous?
- Are the facts of the case disputed?
- Do the parties expect to receive a draft for comment?

Issuing draft reports

If you decide to issue a draft report, copies should be sent to the complainant and the member who is the subject of the allegation for comment. The draft should not be sent to other witnesses or parties interviewed, but you should seek from them confirmation of their evidence before issuing the report.

At this stage, members may make written representations on the draft report. Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. There may be occasions when responses reveal a need for further investigation and result in such significant changes to the report that you may wish to consider whether to issue a second draft. Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.

Final reports

The final report should be sent to:

- The member who is the subject of the complaint;
- The person who made the complaint;
- The standards committee of your authority;

If you consider that there has been no breach of the Code of Conduct, you should explain in a covering letter to the people listed above that the report will be sent to the standards committee for consideration, and that it is possible that the standards committee will reach a different conclusion.

If you consider that there has been a breach of the Code of Conduct, you should make it clear that there will be a hearing into the allegations.

If the subject member is a town or parish councillor, you should advise the relevant parish/town clerk of the outcome of your investigation.

The report should be accompanied by information explaining the circumstances under which the standards committee may conduct a hearing into the allegations, and the procedure for these events.

Report checklist

Your report should contain the information listed below. The level of detail required will vary for each report, depending on the complexity of information to be considered and presented.

- A 'confidential' marking;
- A 'draft' or 'final' marking;
- The date;
- The legislation under which the investigation is being carried out;
- A summary of the complaint;
- The relevant sections of the Code of Conduct;
- Evidence;
- Your findings of fact;
- Your reasoning;
- Your finding as to whether there has been a failure to comply with the Code of Conduct.

Draft reports should also state that the report does not necessarily represent your final finding, and explain that you will present a final report to the standards committee once you have considered any comments received on the draft report.

Final reports should state that the report represents your final findings and will be presented to the standards committee, and include documents that you have relied on in reaching your conclusions, such as:

- Background documents of telephone conversations, letters and notes of interviews with witnesses;
- A chronology of events.

Consideration of the final report

If you find that there **has been a breach** of the Code of Conduct, you must refer it to the standards committee, or its relevant sub-committee, for determination. (Guidance on determinations can be found in *Standards committee determinations: Guidance for monitoring officers and standards committees*)

If you consider that there **has not been a breach** of the Code of Conduct, the standards committee must decide at a meeting if it agrees with this.

At the meeting, the standards committee should simply consider the report; it should not seek to interview witnesses or take representations from the parties. The standards committee's role at this stage is to decide whether, based on the facts set out in the report, it agrees that there has not been a breach of the Code or believes there is a case to answer.

If the standards committee agrees that the Code of Conduct has not been breached, you should arrange for a notice to be published. The notice should state the standards committee's finding, and give reasons for it. In these cases, the member involved is entitled to ask that the notice not be passed to local newspapers.

If the standards committee decides there is a case to answer, the full committee, or an appointed sub-group of the committee, will hold a hearing to make a final determination on whether the Code of Conduct was breached. The standards committee's decision to hold a hearing should be based on careful consideration of the information in your report and on other information given by witnesses.

Standards committees may, at this point, make recommendations to their authorities on matters arising from the report.

Hearings

You will need to arrange a standards committee hearing if the final report concludes that there was a breach of the Code of Conduct or the standards committee, having considered a report that concludes there was no breach, decides there is a case to answer.

The hearing must be held within three months of issuing the final report. It must also be carried out in accordance with the *Local Authorities (Code of Conduct)(Local Determination) Regulations 2008* and taking into account our guidance, standards committee *hearings and determinations**.

During the course of a hearing, the standards committee may decide that it needs additional information in order to reach a decision. Under regulation xx, it can ask you to obtain further information or undertake further investigation. It can make this request only once per case.

On occasion, a standards committee may decide that the sanctions available to it are not adequate for the seriousness of the situation, or that the evidence indicates that the alleged breach is more serious than initially thought, and the case should not be dealt with at the local level. In this situation, it may, under regulation xx refer the matter directly to the Adjudication Panel for England.

Penalties

If a standards committee finds that a member has failed to comply with the Code of Conduct, it can impose a number of penalties.

Under the *Local Authority (Code of Conduct)(Local Determination) Regulations 2008* standards committees can impose one, or any combination, of the following:

- Censure the member;
- Restrict the member's access to the premises and the resources of the relevant authority for up to six months, ensuring that any restrictions are proportionate to the nature of the breach and do not unduly restrict the member's ability to perform his or her duties as a member;
- Order the member to submit a written apology in a form satisfactory to the standards committee;
- Order the member to undertake training specified by the standards committee;
- Order the member to participate in a conciliation process specified by the standards committee;
- Suspend, or partially suspend, the member for up to six months;
- Suspend, or partially suspend, the member for up to six months, or until such time as the member submits a written apology that is accepted by the standards committee, whichever is the shorter;
- Suspend, or partially suspend, the member for up to six months, or until such time as the member undertakes any training or conciliation ordered by the standards committee whichever is the shorter.

The Standards Board for England's guidance, *Standards committee determinations: Guidance for monitoring officers and standards committees*, has a section 'Deciding a penalty' which provides advice to standards committees on deciding an appropriate penalty for a breach of the Code of Conduct.

Any conciliation process should have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached during the process regarding future behaviour of the member concerned, and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

At the end of a hearing

As soon as is reasonably practical after the hearing, the standards committee must give its full written decision to you, to the subject member and to the complainant. The standards committee should give its full written decision to those people within two weeks.

Conflicts of interest

Interests and natural justice

Monitoring officers have four main roles in relation to the Code of Conduct;

- To provide advice to the standards committee;
- To advise members who are the subject of an allegation and the person making the allegation;
- To deal with cases of alleged misconduct referred to them by standards committees (this is a statutory role that can be delegated);
- To advise members about conduct issues before any alleged misconduct takes place.

An investigation could potentially create a conflict of interest between these roles. For example, if you were asked to investigate an allegation against a member and you had advised them on the same issue, it is likely that a conflict of interest would arise. In these situations, you should delegate the investigation to somebody else.

Advising standards committees

In previous guidance, we recommended that monitoring officers should act as main advisers to standards committees on cases referred by an ethical standards officer for local determination unless they have an interest in the matter that would prevent them from performing the role independently. It is vital that standards committee have access to appropriate advice on cases that have been referred for local investigation, as well as those referred only for determination.

The Standards Board for England believes that you should not conduct an investigation and advise the standards committee on the same case. You therefore need to consider whether it is more important to investigate the matter and delegate the role of advising the standards committee or delegate the investigative role.

Personal conflicts

Take care to avoid any personal conflicts of interest. If you find that you have a direct or indirect interest in an investigation – for example, you have a direct financial interest in the subject of the allegation or a family member or friend is involved – you must not participate. Instead, you should notify the standards committee, the member concerned and the complainant, explaining:

- That you will not take part in the investigation;
- The nature of your interest;
- Who will carry out the investigation in your place.

Delegation of investigations

Under section 113 of the *Local Government Act 2003*, monitoring officers can delegate investigations to their deputy or to any other person they wish to conduct a local investigation. As with monitoring officers, deputies and nominated people do not have to be legally qualified but are obliged to follow guidance issued for monitoring officers.

Under section 5(1)(b) of the *Local Government and Housing Act 1989*, local authorities must provide you with sufficient resources to perform your duties. Deputies have the right to the same support as monitoring officers.

In many authorities, monitoring officers will be able to appoint a member of staff to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities to make sure that an experienced officer is available to carry out an investigation, should the need arise. Authorities may also decide to hire suitable people from outside the organisation to carry out investigations.

To ensure that there is no confusion concerning the role and authority of the person delegated to conduct the investigation, monitoring officers should use a formally instituted procedure to record that they have delegated their investigative role to another person. You must inform the standards committee if you delegate an investigation in case they need to provide the investigator with more information.

Cases referred for local investigation by an ethical standards officer

This section relates to cases referred to you for investigation by an ethical standards officer as opposed to a standards committee.

Referring allegations

The *Local Government Act 2000* enables ethical standards officers to refer to monitoring officers allegations that a member has breached the Code of Conduct.

When referring an allegation, the ethical standards officer will forward a copy of the allegation letter, along with any other significant information that they consider appropriate.

Ethical standards officers can also refer completed investigation reports to monitoring officers for local determination by a standards committee. This is a separate process

explained in The Standards Board for England's guidance, *Standards committee determinations: Guidance for monitoring officers and standards committees*.

Disclosure of Information

Section 63 of the *Local Government Act 2000* limits the circumstances in which information obtained by an ethical standards officer during an investigation can be disclosed. Any person who discloses information in breach of section 63 is guilty of an offence.

If an ethical standards officer refers an allegation to you part-way through an investigation into that allegation, under section 63 (as amended by the regulations), they are allowed to disclose any information that they have obtained during the investigation to enable you to carry out your duties. There may, however, be circumstances in which the ethical standards officer will be unable to disclose information – for example, where the Secretary of State has advised them that the disclosure would not be in the public interest.

Referring cases to ethical standards officers

During the course of an investigation, circumstances may arise that prompt you to ask an ethical standards officer to take the case from you.

These circumstances could include:

- **Evidence of further breaches**
You may uncover evidence of a further possible breach that relates directly to the investigation, revealing, for instance, a consistent pattern of behaviour.
- **Obstruction of an investigation**
For example, where a member refuses to co-operate with your investigation. The ethical standards officer is likely to accept a case back only if he or she believes you have genuinely been prevented from completing the investigation.

Cases where an officer obstructs an investigation are not a matter for the Standards Board for England. It may, however, be a disciplinary matter for your authority to consider under the terms of the officer's contract of employment.

When you request an investigation to be referred to an ethical standards officer, you must state in writing to the ethical standards officer the reasons why you believe it should be referred. All requests should be made prior to the completion of your investigation.

You can ask an ethical standards officer to take a case only once during the course of an investigation, so it is important to make sure you are satisfied that it is the correct course of action to take.

The ethical standards officer will respond to your request within 21 days. They will either direct you to continue with your investigation or accept the matter as requested.

Alternative Action

On dealing with allegations, a standards committee or ethical standards officer can decide that some form of action other than investigation or determination is required at a local level. This is most likely to happen in situations where the standards committee or ethical standards officer considers that a case has broad relevance for the ethical governance of an authority. The standards committee or ethical standards officer may, for example, direct you to make recommendations about wider issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation. Further information on when standards committees may consider alternative to be appropriate can be found in the Local assessment of complaints guidance.

Under regulation xx once a standards committee refers an allegation for alternative action an investigation into that allegation can no longer take place. However, if an allegation is referred for investigation by a standards committee you may decide, after commencing the investigation, that the issues would be more appropriately dealt with through alternative action rather than a full investigation. In such circumstances you should state in writing to the standards committee the reasons why you believe it should be dealt with by alternative action rather than by investigation, and what action you think is appropriate. All requests should be made prior to the completion of your investigation. You must notify the member who is the subject of the allegation and the complainant of a decision to request that the allegation is dealt with through alternative action as opposed to investigation.

You should report back to the standards committee or ethical standards officer within three months on the outcome of your actions or with details of your proposed actions. If the standards committee or ethical standards officer is not satisfied with the action taken or proposed to be taken, they may require you to arrange for the publication of a statement giving details of the action proposed and the reasons why it was not fully implemented.

Toolkit for monitoring officers when carrying out investigations and alternative action in relation to allegations referred to them by standards committees or ethical standards officers

Introduction

This guide provides an introduction to the practice of investigation and is designed to assist anyone delegated to investigate allegations of misconduct. Being the subject of an investigation can be a very difficult experience. We hope this guidance will assist you in ensuring that you establish what happened in a fair and objective manner; set out clearly the reasoning for the finding reached and complete the investigation promptly and proportionately.

We recognise that there is a wealth of knowledge among monitoring officers but wanted to share our own best practice on how to conduct investigations. What follows is an outline of the principles by which we conduct our investigations. It is not intended to be prescriptive but it is worth bearing in mind that the processes outlined below have been tested at the Adjudication Panel for England and many are based on specific recommendations by the APE tribunals.

Part 1 - Planning the Investigation

There needs to be a written record to demonstrate that certain matters were considered at the start of each investigation. This document is most likely to take the form of an investigation plan (Investigation Plan template Appendix 1). The following areas should be covered in the plan:

- State the complaint made against the subject member. You may find it necessary to seek clarification from the complainant;
- Identify which paragraphs of the Code of Conduct may have been breached (you do not need to accept the complainant's interpretation of what paragraphs may have been breached). It is helpful to breakdown each potential failure to comply into the component parts of each provision. For example, in considering paragraph 6(a) you will need evidence to demonstrate that i) a member used their position ii) that the member used it improperly and that iii) the member conferred or attempted to confer an advantage or disadvantage;
- What facts need to be determined to establish if the member breached the code and to decide the appropriate finding? This needs to include:
 - facts which would establish if the conduct happened as alleged
 - facts that would need to be proven to show that the conduct constituted a breach of the Code of Conduct
 - facts which may aggravate or mitigate the alleged breach, for example, provocation or an apology);
- The evidence that you would need to determine the issues outlined in your plan including who you will need to interview and why;
- The evidence that has been supplied by the complainant or, in the case of an investigation plan review, the evidence that you have gathered;
- How you plan to gather the evidence that you need;
- How long you think it is likely to take you.

You should contact the complainant and subject member to advise them of your contact details and provide them with a preliminary time scale for the investigation (Contact Parties Letter template Appendix 3)

If at any stage in the investigative process there are significant changes to any of the above areas an investigation plan review may need to be completed (Investigation Plan Review template Appendix 2).

At the end of your investigation you should have documents which chart the approach you took to the investigation and why and when changes to this approach were taken. You do not need to share these documents with the parties involved in the investigation; they are for you to use as you wish. Their principle function other than as a planning tool is as an audit trail should your investigation be the subject of a complaint or review.

Part 2 – Documentary evidence

When?

Documentary evidence should be sought:

- At the earliest opportunity, if possible, before you conduct any interviews.
- When drafting the investigation plan it is helpful to also draft a list of the documents you need and from whom they will be obtained. This list can then form the basis of the first contact you make with the parties and other witnesses.
- It is a good idea when first making written contact with the subject member to invite them to provide an initial response to the allegation in writing. This provides those who wish to admit to the breach an opportunity to do so and may then save all involved time and effort. A written response may also provide you with additional useful information before the interview stage (Contact Parties Letter (member) template Appendix XX).

How?

Requests for information should:

- Be made in writing. Even if the initial contact was made by phone this needs to be followed up in writing or, where the request is made to an officer, by a written file note;
- State the legal authority you have for asking for the documents;
- State the broad purpose for which you need the document (i.e. “an investigation into the conduct of Cllr X). You do not need to provide the detail of the complaint against the member at this stage;
- Outline the confidentiality requirements that pertain to the information request;
- Set a deadline for response;
- Provide a contact name and number for further enquiries.

What if....?

- **The evidence is held on a computer**
 - If computer generated documents are to be relied upon it is good practice to identify the person who is responsible for the computer operation;
 - It may be appropriate to search the hard drive for deleted or corrupted documents and a specialist firm may be employed to facilitate this;
 - When considering obtaining information from computers, standards committees should have regard to the provisions of *The Regulation of Investigatory Procedures Act (RIPA)*. This act imposes specific procedural

requirements for authorisation of certain activities such as the interception of communications (e-mails). [\(A copy of the RIPA is attached to this guidance.\)](#) **Add additional appendix.** For the purposes of RIPA, personal information does not include information about an individual which is freely accessible by, for example, the authority, such as personnel records.

- **The information is highly sensitive**
 - There may be reasons in particular cases why you would not wish for a subject member or other party to be alerted to a request; for example, if you consider that this might lead to destruction of evidence by a party or collaboration of witnesses. In such circumstances it may be appropriate to arrange to meet with the witness, having given them a brief outline of your role, and then make your request for the relevant documents during the meeting. In such circumstances it is critically important that you explain to them the powers that you have to obtain information. If in doubt it may be prudent to seek legal advice on how to proceed.

- **The request for information is met with refusal**
 - Remind the party of the legal obligation they have to provide information;
 - Whilst there may be a legal obligation on an individual or organisation to provide documents, enforcing those legal obligations is likely to involve time consuming and costly legal proceedings. If possible it may be easier to see if there is another route to obtaining the same information.

Part 3 – Interviews

Introduction

Your goal in interviewing is to obtain the most informed, reliable evidence possible. It is not to ambush or catch out interviewees. The following guidance on interviewing will assist you in achieving this.

Planning the interview

Order of interviews

You would normally expect to interview the member who is the subject of the complaint at the end of the investigation when you have gathered all your evidence. This will give you the opportunity to put that evidence to the member and obtain their responses to it. However, it could save time if you find out at the outset that the member admits the allegations or part of them. You could ask for an initial written response to the allegations to establish this.

You may decide to carry out consecutive interviews on the same day if you are concerned that witnesses may collude or use information provided to them.

The format of the interview

- It is likely to be more appropriate to conduct a face to face interview as opposed to a telephone interview if:
 - The matters involved are sensitive;
 - The interviewee is vulnerable;
 - You will need to refer to multiple documents during the interview;
 - The interviewee wishes to have a legal representative present;
 - The interview is with the subject member.
- It may be more appropriate to conduct a telephone interview if:
 - There are significant resource implications either in terms of cost or time in conducting a face to face interview;
 - The interview does not fall into one of the categories outlined above.
- If a member insists on a face to face interview then serious consideration should be given to their request. You must specifically check that there is no medical or disability related reason for their request and if there is, then you must conduct a face to face interview. If there is no medical or disability related reason then the decision is at your discretion. If you still wish to proceed with a telephone interview despite their request then you need to outline your decision in writing on the file, to show that it was both proportionate and reasonable;
- Do not conduct joint interviews;
- A member may have a friend or adviser present. That person should not be someone who is a witness and should be asked to keep the matters confidential.

The venue

If you are conducting a face to face interview ensure that the venue is:

- Mutually convenient;
- On neutral territory;
- In a private room where you cannot be overheard;
- Somewhere where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them e.g. the complainant/subject member. If in doubt, check and record the response in writing;
- Safe for you the investigating officer;
- Occasionally it may be appropriate to conduct an interview at the home of the interviewee. This would generally be at the request of the interviewee.

Information you must provide interviewees

In all but exceptional circumstances (outlined below) you must provide the following information in writing to the interviewee (Letter before interview template Appendix 4):

- Confirmation of the agreed time, date and venue of the interview (or if a telephone interview confirm this fact);

- Confirm if the interview will be recorded (if appropriate);
- Confirm that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation. Ask that they provide you with the name and status of their representative before the interview;
- The legal framework within which you are conducting the interview;
- How the information they give you in the interview may be used;
- The circumstances in which the information that they give you during the interview may be made public;
- The confidentiality requirements that they are under as an interviewee;
- Details and copies of any documents you may refer to during the interview.
- In the case of the subject member, details and copies of any evidence you have gathered and which you may refer to in your report. You do not have to disclose all witness testimony prior to the interview, you may wish to do so during an interview once you have obtained the interviewees account. You could also consider providing an outline of the areas you intend to cover at interview;
- Your contact details should they have any questions or concerns before the interview.

Note that if you only need to confirm one or two factual details with a council officer you may make contact with them by phone and do not need to forewarn them. However when obtaining this information you must:

- Verbally outline all of the above information;
- Check that they are happy to give it to you then, rather than at an agreed date in the future;
- Confirm the detail of information they provided in writing.

Special circumstances

- If an interviewee is disabled you must make reasonable provisions to cater for their specific needs. If an interviewee is vulnerable or a minor then they must be accompanied by a third party at the interview.

Structuring an interview

Interviews should be planned in advance. You can plan your questions using the following suggested format (Interview Plan template Appendix 4):

- Divide the information you require into discreet issues, for example, Issue 1 : the planning meeting on x date; Issue 2 : the planning meeting on y date;
- Tackle one subject issue at a time;
- Make a note of the evidence you have already obtained about each issue;
- Note how you would succinctly summarise the evidence to the interviewee;
- “Drill down” asking open questions about that one specific issue until you have all the information you need;
- Ask open questions about information the interviewee or other witnesses has provided about the issue;
- Where relevant ask the interviewee to reconcile differing accounts;
- Ask closed questions to confirm the information you have obtained about the specific issue;
- Move onto the next issue using the same method: broad open question about the subject; drill down for information with specific open questions; conclude the area by asking closed questions to confirm what you have been told;
- Do not dart back and forth between different issues as you are liable to confuse yourself and the interviewee;
- If you are interviewing with someone else, one person should ask the open questions about each subject area, while the other should ask the closed questions at the end of each subject area to clarify what was said.

Conducting the interview

Recording the interview:

- All interviews of substance should be recorded.
- The only exception is when the interview is likely to cover only a small number of factual matters, and in this case it may be more appropriate to resolve these factual matters in writing.
- You must forewarn the interviewee in writing that the interview will be recorded (see above).
- You must obtain the consent of the interviewee before you start recording.
- You must ask them to record their consent on the record once you have started the recording.
- You should offer to send the interviewee a copy of the transcript.
- If they ask, you can send them a copy of the recording too.

- If you are concerned that the interviewee may share the transcript with other witnesses, you can delay the sending of the transcript/recording until you have completed all of your interviews,
- The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering. It is the practice of Standards Board investigators to use MP3 players to record face to face interviews.

At the start of the interview

- When the interviewee arrives, try and put him or her at ease by chatting about non case related matters, for example, the weather.
- Before you start the formal interview inform the interviewee that there is standard interview pre-amble that you must take them through, this ensures that any rapport you have established is unlikely to be lost when you take them through the legal framework of the interview.
- Confirm that the interview will be recorded and put the recording device in a visible place on the desk.
- With their permission start recording.
- Ask them to confirm for the record that they consent to the recording.
- Confirm for the record who you are, and the powers under which you are conducting the interview.
- State that date and time for the record.
- Confirm that they received your letter outlining the arrangements for the interview.
- Confirm that they read and understood your letter and ask if they have any questions about any of the information within it.
- If the interview is with the subject member repeat verbally all of the information contained in your letter.
- If the interviewee is at all unclear about anything then repeat verbally all of the information contained in your letter.
- Explain that they can take a break whenever they choose.
- Explain that you will offer them a break if the interview goes over an hour, even if they do not want one.
- Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end.

- State that they can ask you to rephrase a question if they don't understand it.

(Interview Preamble template Appendix XX – To be attached)

During the interview

- Start the interview with the subject member with some background questions, such as 'how long have you been a member', or 'what training have you had on the Code?'
- Do not ask multiple questions.
- Do not ask leading questions, for example, you said this to the clerk, didn't you?
- Do not ask the interviewee to speculate.
- Accurately put the evidence of other interviewees to the interviewee.
- When asked, explain the relevance of your question.
- Do not allow the interviewee's lawyer or representative to answer a question.
- You must allow the interviewee to stop and obtain advice whenever they choose.
- If the interviewee becomes upset or unwell you must offer them a break.
- Never raise your voice.
- Only interrupt if the interviewee is being unreasonable or is not providing relevant information.
- You can ask an interviewee to reconcile differing or contradictory accounts they have given of events.
- You should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then you should move on to another point or issue.
- Do not question the subject member about matters which fall outside the original allegation/s.
- If the interviewee wants a break, record the time of the break on the record and the time you resume the interview. Ask the interviewee to confirm for the record that you did not discuss about anything case related with them during the break.

Closing the interview

- State the time the interview finished.

- Thank the interviewee for their time and outline what will happen next.

After the interview

(Letter Enclosing Interview Record /Transcript template Appendix 6)

- Send the interviewee a copy of the transcript
- State in the letter that if you do not hear from them by a specified date you will assume the transcript is agreed.
- If the content of the transcript is disputed check the discrepancies against the recording.
- If the transcript is substantiated by the recording, write to the interviewee to inform them of this. In these circumstances, when the matter is referred to the standards committee submit the transcript, the recording, the interviewee's letter outlining the dispute and your response.

Part 4 – Evaluating the information

- Review your IP in the light of information gathered during the interview.
- Review all the evidence you gather to determine if there are any gaps in it.
- Take a view on all disputed relevant matters. It is sufficient to form your opinion based on the balance of probabilities. If you cannot do this, you may need to seek further information (Balance of Probabilities checklist Appendix XX – To be attached).
- Weigh up all the evidence and decide if the alleged conduct occurred.
- If you decide that the subject member acted as alleged, you will need to consider whether his or her conduct involved a failure to comply with the Code of Conduct.
- If you decide the member breached the Code, consider whether you have evidence of any mitigating or aggravating circumstances. If not you may need to seek further information.

Part 5 – Drafting the report

When you have concluded your investigation, you will need to write up your findings in a report to the standards committee. The report should contain the following information (Report template Appendix 7):

Title page

- Who the report is for;
- Who the report is by;
- The date of the report.

Executive summary

- The full allegation and who it was made by;
- The provisions of the code that were considered;
- Conclusion as to whether there has been a failure to comply with the Code;
- Finding.

Councillor X's official details

- When the member was elected;
- The member's term of office;
- Any other council's they are a member of;
- Details of any committees on which the member serves or has served;
- Where relevant the date a member ceased to be a councillor;
- The date the member signed an undertaking to abide by the Code of Conduct;
- Full details of any training the member has received in the code of conduct.

The relevant legislation and protocols

- Relevant extracts of the Code of Conduct;
- Relevant extracts from any other legislation considered in the report.

The evidence gathered and the Standards Committee's consideration of the evidence

- Start by summarising who you have obtained information from;
- Outline chronologically the facts that you have established;
- Set out undisputed facts as facts, do not précis them with he said/the minutes state. If they are undisputed just state them as fact;
- Where there is an evidential dispute outline the different views then outline your conclusion as to the facts and why you have reached this conclusion.

For example:

- The clerk, Cllr X and Cllr Y met at Cllr X's house on y date at x time.
 - At interview the clerk stated that Cllr X said.....
 - At interview Cllr Y stated that Cllr X told the clerk.....
 - At interview Cllr X stated that he told the clerk
 - I have considered the following issues when deciding what Cllr X said to the clerk I consider that on the balance of probabilities Cllr X told the clerk.....
- Include all the evidence you have gathered even if it does not support the conclusions you have reached;
 - Include any mitigating or aggravating factors, including the state of mind of those involved;

- Where relevant reference the material with the evidence bundle.

Summary of the material facts

- Summarise the facts needed to substantiate the conclusions you have reached;
- This section will look like the previous one albeit briefer. Where there was a disputed fact you will only need to include the version you ultimately accepted as fact.

Councillor X's additional submissions

- Outline information or opinion submitted by the member which you did not consider relevant to the case;
- Outline why you do not deem the above to be relevant.

Reasoning as to whether there has been a failure to comply with the Code

- Take each alleged breach in turn;
- Outline which part of the Code you are considering and explain the test you are applying when determining if there has been a failure to comply with the Code;
- Explain in detail, giving reasons, why you do/do not consider that the conduct constitutes a breach of the Code;
- Do not introduce any new facts or opinions. You must only refer to evidence or opinion that has been outlined earlier in the report;
- It may be appropriate to refer to the opinions of those involved in the case if the matter under consideration is bullying or disrespect;
- The explanation of the test you are applying and the reasons for your conclusions need to be detailed and clear enough for a lay person with no legal background to understand.

Finding

- Even if there are multiple allegations, you can only reach one finding;
- Outline in detail the reason for your decision;
- Refer to aggravating/mitigating facts, which must be outlined in the facts section earlier in the report.

Schedule

- List the exhibits with the title “ *Evidence taken into account*” (Bundle of Evidence template at Appendix XX – to be attached);
- Exhibit all the evidence upon which you have relied when reaching your conclusion;
- In complex cases it may be appropriate to provide a chronology.

Part 6 – Issuing a draft report

Who should I send the draft to?

- You may want to issue a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. This is helpful if the report is complex or your conclusions are likely to be disputed by either party.
- The draft should not be sent to other witnesses or parties interviewed, but you should seek from them confirmation of their evidence before issuing the report.

How should it look?

- Ensure that the draft report is clearly marked as a draft.
- You must state that the report may be subject to change and does not represent your final conclusion.
- If you have found the subject member in breach you should send him copies of the evidence that you have relied upon when reaching this conclusion (see section 8 - bundles).
- You must consider whether any of the information in the draft report, or evidence bundle is confidential information that should not go into the public domain e.g. medical details, personal contact details. All information of this nature should be redacted from the draft and final report.
- Send an accompanying letter stating (Cover Letter Draft Report template – Appendix XX - to be attached):
 - That the report is confidential;
 - That it can be discussed with a legal representative;
 - The date by which comments must be received.
- It is important to keep a copy of the draft and bundle that you send to the subject member. This acts as a record of what information the member has received and prevents duplication of work when issuing the final bundle.

Comments on the draft

- Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. There may be occasions when responses reveal a need for further investigation and result in such significant changes to the report that you may wish to consider whether to issue a second draft. Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.
- Where comments on the draft are critical of the investigation or the investigator you may need to consider how to respond to the complaints made.
- Interpretative comments occur when a party disagrees with:

- the interpretation of the code or other legislation;
- the analysis of the evidence;
- the analysis of an individuals conduct;
- conclusions reached in an investigation;
- the scope of the investigation;
- how and from whom evidence was obtained.

These complaints will normally focus on the draft or final report and will not normally contain any criticism of the specific actions of an individual. They may however criticise an individual for reaching certain conclusions.

▪ **The procedure for handling interpretive comments**

Comments received before the draft is issued

- If the comments are made by the subject member then you must respond in writing.
- If the subject member does not understand either the Code or the investigative process then you must seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing. You need however only show that you took all reasonable steps to address the subject members' confusion.
- If comments are made by the complainant or a third party you can either respond to their comments or ask them to wait until they have read the draft report.

Comments received in response to the draft report

- You must keep a written record of your consideration of any comments received on the draft.
- It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report.

Comments received after the final report has been issued

- Write to the party explaining that the investigation is now closed and refer them to the person who is dealing with the standards committee hearing or to the Adjudication Panel for England if the matter has been referred to them.

Comments received after the hearing

- Respond saying that the matter is now closed and no further correspondence will be entered into on the specifics of that case.

- Add any critical comments received on the draft to the bundle of evidence.

Part 7 – The final report

Who should I send the final report to?

- The standards committee, the complainant and subject member.

How should it look?

- You must state that the report represents your final finding and will be presented to the standards committee.
- If you have found the subject member in breach you should send him/her copies of the evidence you have relied upon when reaching this conclusion (see section 8 - bundles).
- You must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain e.g. medical details, personal contact details, signatures etc. All information of this nature should be redacted from the final report.
- Send an accompanying letter stating (Cover Letter Final Report template Appendix XX – to be attached):
 - That the report is confidential;
 - That you have considered the comments they made in response to the draft report and have amended the final report where appropriate;
 - That it can be discussed with a legal representative.

Part 8 – Producing and referencing the bundle of evidence

You will need to make two bundles: one of evidence used, which you will submit in full to the standards committee, the other a schedule of unused evidence. You may be required to submit documents from this bundle if they are requested by the standards committee or the member.

Contents of the evidence bundle

The evidence bundle will typically include:

- Documents which establish the legal framework for the investigation;
 - The complaint letter,
 - The Code of Conduct,
 - A copy of any legislation referred to in the report,
 - A copy of the subject member's declaration of acceptance of office.
- Any document upon which you have relied when reaching your decision.
This is likely to include:

- Transcripts/interview records with all relevant parties and interviewees;
 - Written correspondence from the subject member on substantive matters, including comments they made on the draft report;
 - Minutes, reports and other documentary evidence upon which you have relied when reaching your conclusion as to the facts.
- Any document which would assist in the member's defence
This must include:
 - Any document that the member may seek to rely on in his defence of the conclusions reached;
 - Documents which contains information which is inconsistent with the facts as established by the investigation;
 - Documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses;
 - Documents which contains information which could lead to a finding that the Standards Committee or the investigator has acted in breach of the subject member's rights under the Human Rights Act
 - Documents which provide an explanation or partial explanation of the subject member's actions.
 - Background documents.
 - These are documents which you did not rely upon when reaching your decision, but which may be helpful to the standards committee when considering the case.
 - They should also include documents that the member thinks are relevant but which are not, in your opinion, material to the case.
 - A schedule of unused evidence
 - This is a list of the documents that are immaterial to the investigation.
 - You should provide sufficient detail about each item so that the standards committee or subject member can request it if they wish.
 - You do not need to prepare a bundle of the unused evidence.

You do not need to disclose:

- Sensitive information which you have redacted;
- Information protected by legal privilege and public interest immunity;
- Internal documents such as file notes and draft reports. These may, however, be requested by the standards committee so it is important to be careful what you write down.

Failure to disclose documents to the standards committee or the subject member which may be relevant to the case or the subject member's defence may result in the standards committee reaching an inappropriate decision and the decision being deemed unsafe upon appeal.

Structure of the evidence bundle

- The bundle should begin with the documents which establish the legal framework for the investigation.
- The remaining evidence should then be grouped thematically e.g. Council policy, minutes, etc.
- Arrange the documents chronologically within their group.
- The front page of the bundle should be numbered 000001 with each subsequent page numbered in ascending order to the front page of the bundle.
- If a document is missing, a note to this effect outlining the reasons why the document is unavailable should be provided to the standards committee.
- Only include multiple versions of a document if it is evidentially important to do so.

Redacting the bundle

What should be redacted?

- The bundle may be put in the public domain and redactions should be made on this basis.
- The telephone number, email address, signature of any party other than on a transcript or witness statement.
- While the standard committee will need witness contact details these should still be redacted from any documents and provided as a separate list to the standards committee.
- Age and date of birth of a party (unless directly relevant to the case).
- Any information which relates to matters which were not referred for investigation.
- Personal data as defined by the Data Protection Act 1998.
- Items such as petitions, legal advice and the evidence of vulnerable people need to be redacted on a case by case basis. If in doubt seek advice from your legal department or the Standards Board for England on this matter.

Part 9 – Confidentiality

The legal position

As outlined in the investigations guidance the legal parameters are as follows:

You should not disclose information obtained in an investigation unless:

- The disclosure will assist ethical standards officers to perform their statutory functions;
- The disclosure will assist the monitoring officer to perform his or her statutory functions;
- You have permission from the person to whom the information relates to disclose it;
- The information has already lawfully been made public;
- The disclosure is made for the purposes of criminal proceedings in the UK.

Any draft report that you issue on the outcome of the investigation should be marked as confidential, to preserve the integrity of any further investigation that you may need to undertake.

Final reports may be made available on request provided that confidential or exempt information as defined by part VA of the *Local Government Act 1972* has been removed.

Section 63 of the *Local Government Act 2000* limits the circumstances in which information obtained by an ethical standards officer during an investigation can be disclosed. Any person who discloses information in breach of section 63 is guilty of an offence.

If an ethical standards officer refers an allegation to you part-way through an investigation into that allegation, under section 63 (as amended by the regulations), they are allowed to disclose any information that they have obtained during the investigation to enable you to carry out your duties. There may, however, be circumstances in which the ethical standards officer will be unable to disclose information – for example, where the Secretary of State has advised them that the disclosure would not be in the public interest.

Confidentiality in practice

Maintaining the confidentiality of an investigation can be difficult, in some circumstances. It is however important that you take all reasonable steps to maintain the confidentiality of your investigation as failure to do so may compromise the integrity of your investigation.

Practical steps to maintain confidentiality

- Mark all of your letters, transcripts and reports as confidential.
- Outline the legal restrictions on the disclosure of information on any letter that you send. You must however, clearly inform members, in writing, that they can appoint a solicitor, or other person, to act as their representative and that they can disclose any relevant document to this representative.
- You should state that their representative cannot be someone who may be involved in the investigation.
- In order to avoid confusion that might arise about the investigative process, it is important that you make it clear to all parties that they should not approach witnesses to discuss the case. The name of any relevant witness should be brought

to your attention along with a brief outline of why that witnesses' testimony is relevant to the case.

- When arranging interviews ask interviewees to identify the name of any person who is accompanying them to the interview and to state what their relationship is to the interviewee. You should explicitly state, in writing, that they cannot be accompanied by anyone who may be called as a witness in the investigation.
- If you think that there is a possibility that witnesses may discuss their testimonies with each other, you should not send the transcripts of any interviews out until all of the interviews have been concluded. This may mean that you send interview transcripts out with the draft report.
- Where you are interviewing a number of people who have close relationships with one another, it may be prudent to interview them back to back. This reduces any opportunity for collaboration.

What to do if confidentiality is breached

- Write to the party reminding them of the confidentiality requirements and, if they are a councillor, of their duties under the code.
- If you have evidence that information was disclosed to a party prior to their interview, you can take this into account when evaluating the reliability of the witness's evidence.
- If the disclosure was made by a councillor you can consider making a formal complaint about their conduct.
- If you consider that the disclosure was substantial you may want to take legal advice on whether or not to refer the matter to the police.

Part 10 – Complaints about the conduct of the investigation (service complaints)

It is important that there is a clear documented procedure for considering complaints about the investigation. The procedure should fall into two discreet stages: first an evaluation of the nature of the complaint and second what action should be taken to handle the complaint.

Evaluating complaints

There are two types of complaints: complaints about the conduct of the investigation (service complaints) and complaints about interpretation and reasoning as discussed on page **XX** (amend as appropriate).

Service complaints occur when a party criticises the actions of an investigator. Such criticisms may include:

- administrative errors for example misspelling of a name;
- failure to communicate;

- criticism of the manner in which the investigator behaved ;
- criticism of the length of time it took to conclude the investigation.

The procedure for handling service complaints

You will already have a procedure for processing service complaints generally. You should consider whether to use this procedure when dealing with service complaints about an investigation. The procedure may include the following provisions:

- An agreement that investigators will explain to parties making a complaint that there is an independent service complaints procedure that they can use.
- The complaint should be acknowledged by someone other than the investigator within an agreed time frame.
- The complaint should be considered by someone independent of the investigation.
- A written response should be provided within an agreed time frame.
- There should be an agreed appeals process which should be clearly communicated to the complainant.
- Once the complainant has availed themselves of the appeals process it is reasonable to state that no further communication will be entered into.
- The investigation can continue while a service complaint is being addressed. There may however be circumstances where the complaint is so substantive that it would not be appropriate for the same investigating officer to continue on the case while the service complaint is ongoing. .

Note that the conduction of an investigation into a service complaint should not postpone the conduction of the main investigation.

Handling mixed complaints

It is not uncommon for complainants to mix comments on interpretive matters with service complaints. In such cases you should write to the complaint outlining which matters will be considered by your service complaints process and which matters are differences of interpretation which will not be considered as part of the complaint.

Part 11 - Alternative Action

It may not always be in the interests of good governance to undertake or complete an investigation into allegations of misconduct. In some circumstances it may be more appropriate to deal with matters by taking alternative action. This decision may be made on receipt of the allegations or may only become clear after some investigation has been conducted. In which case you should refer the case back to the standards committee.

It is important to be aware that once you have embarked upon a programme of alternative action you cannot reopen the investigation even if alternative action fails. The decision to take alternative action closes the opportunity to investigate. You need to communicate this clearly to all parties.

Standards committees have very broad powers to direct you to deal with cases. Under the regulations they have the following options:

- Mediation
- Training
- Lessons learnt
- Peer mentoring

If you embark on a course of alternative action, you will need to emphasise to the parties that no conclusion has been reached on whether or not the subject member failed to comply with the code.

Circumstances where alternative action may be appropriate

The council of which the subject member is part has a poor understanding of the code of conduct and council procedures. This is likely to be evidenced by:

- A number of councillors failing to comply with the same area of the code.
- Council officers giving incorrect advice
- Poor financial procedures
- Failure to adopt adequate procedure rules
- Failure to adopt the Code of Conduct

There has been a breakdown in relationships within the council. This is likely to be evidence by:

- Allegations of disrespect, bullying or harassment.
- Factionalised groupings within the council
- A series of tit for tat allegations
- Ongoing employment issues, which may include resolved or ongoing employment tribunals or grievance procedures

What action is appropriate

Once you have identified what issues you think need to be dealt with, you should then consider how best to address them. The following methods have been used by ethical standards officers when issuing a direction:

Mediation:

- This is best conducted by a trained mediator.
- You should not set objectives for mediation as it is important that the results of mediation are determined by the parties and the mediator.
- You can explain to the mediator what issues you are seeking to resolve.
- You need make a recommendation as to who should attend mediation but allow for additional people to come forward.

- In cases of alleged bullying you need to ensure that the parties understand that the mediator will not force them into a room together until they are ready and that they will not be left alone with the alleged bully.

Training:

- This can be conducted by you, one of your team or you can involve a local association.
- You can require the councillors to attend training on a specific issue, for example interests, or wider areas for example standing orders, the code of conduct.

Lessons Learnt:

The council can be asked to review what has occurred with a view to improving their processes and procedures. You may assist them with this, or another member of your team, or someone from the local associations. You need to make sure that the council understand that such a review will not change the decisions made by the council, but that its purpose is to learn from any mistakes that may have been made.

You can ask a council to assess:

- The decisions they have made on a specific issue, for example, a review of all the decisions they have made about the parish hall, councillors register of interests or the interests that they have declared at meetings.
- Their standing orders or procedures.
- Their conduct towards the clerk/another member

Peer mentoring:

- You can assign an experienced clerk or chair from another authority to mentor a clerk or chair who is struggling.
- You can assign a successful authority to mentor the authority in difficulty.
- Mentoring can take the shape of one on one meetings. Work shadowing of the mentor, a review of the mentoree's work by the mentor or anything else the mentor and the mentoree agree.

Trouble shooting

What if the parties refuse to co-operate?

- You need to make it clear that once a decision has been made to take alternative action an investigation will not be undertaken. This removes, for some, the incentive for not co-operating.
- Identify why they are refusing to participate. Oftentimes refusal is based on a misunderstanding, for example people are fearful of mediation as they don't want to be in the same room as the person they believed bullied them. You can explain that they do not have to be as the mediator can conduct one on one discussions.
- You can call a council meeting to discuss the concerns people have and outline how you propose to carry out your alternative action plan.

- Ultimately you can publish an article in the local newspaper outlining why your proposed alternative action failed.

How do I find a mediator?

- Ask other monitoring officers in your area as they may be able to make recommendations. Some monitoring officers are also trained mediators and this is a helpful dual skill set to use.
- Contact one of the many mediation organisations advertised on the internet.

Is the alternative action confidential?

- It is for you to determine what, if any, information you make public.
- It is worth involving the affected council in this decision, especially if it is a small parish council, where rumours spread easily.
- If you do decide to make a public statement, you must make sure that the statement could not be seen as a “finding” on the guilt or otherwise of the subject member.

Appendix 1 Investigation Plan – Case No:

Date received by Standards Committee:
Date Referred to Investigator:

Ref No:	Complainant:
Subject Member:	Council:
Investigator:	

Target for Monitoring Officer's receipt of Draft Report	
Date Due:	Explanation:

Target for issue of Draft report	
Date Due:	Explanation:

Target for issue of Final Report	
Date Due:	Explanation:

Case Analysis

Behaviour Alleged	Code Paras	Issues for Determination	Evidence required	Evidence obtained (handwritten if necessary)
Behaviour Alleged	Code Paras	Issues for Determination	Evidence required	Evidence obtained (handwritten if necessary)

3. Other matters (*Identify any thoughts / lines of inquiry not outlined in the table and also highlight any problems in the referral process*)

Approved by _____

Date

Appendix 2

Investigation Plan Review Sheet

Case Number:

Date:

Investigator:

Council:

Reason for review (tick box)

New Allegation

Additional information / witnesses

59 (1)(b)

Case review

Details relating to above

Review of Targets

Revised draft report target:

Revised dispatch of final report date:

Reason for revisions:

Agreed by:

Signed:

Date:

(A copy of this proforma should be appended to the Case Investigation Plan by the Investigator / Caseworker)

Appendix 3 – Contact Parties letter template

PRIVATE AND CONFIDENTIAL

Dear [TITLE] [SURNAME]

REFERENCE:

I write further to [Insert Name]'s letter of [Date] and [Complainant Name]'s allegation that you have or may have failed to comply with [Authority Name] Council's Code of Conduct.

I have been appointed by [Insert MOs name] to investigate the allegations which have been made about your conduct. I would like to assure you that although the Standards Committee has referred the allegation for investigation, the Standards Committee has formed no view on the matters set out in the allegation. The investigation, including seeking information and documentation from you and other people, where relevant, will enable the Standards Committee to reach a conclusion on whether there has been any failure to comply with [insert Council Name] Council's Code of Conduct.

I enclose a copy of the documents which make up the allegation made against you. Sections of text that contain personal data have been removed in accordance with the provisions of the Data Protection Act 1998. Information that is irrelevant to the allegation has also been removed. You may disclose these documents to your solicitor or other representative, should you choose to appoint one, for the purposes of seeking advice in relation to this investigation. The documents should not be disclosed to anyone else.

Please note the contents of the *Guide to the Investigation Process* which I enclose. If you would like further clarification of the process please telephone me.

Please provide the following information in writing by [Date], in order that I can progress the investigation:

You are welcome to provide me with your initial response to the allegation should you wish to do so at this point.

I hope to complete the investigation within 6 months. In order to assist in the progress of the investigation could you please let me know of any periods of time (i.e. holidays) when you will not be available.

I want to keep you informed of progress of the investigation. However, I am aware that some people would prefer to be contacted only when there are substantive developments, while others will want to be updated more regularly. If you would prefer to be updated on progress at monthly intervals please contact me to confirm this and I will endeavour to accommodate your wishes..

If you have any queries I can be contacted directly on [\[insert contact number\]](#) or by e-mailing [\[insert email address\]](#) Please quote the reference number on all correspondence.

Yours sincerely

[\[Investigator Name\]](#)
Investigator

Enc.

Appendix 4 – Letter before interview template

Date

PRIVATE & CONFIDENTIAL

Dear Name

REFERENCE:

Following our conversation on [Date] I am writing to confirm our [telephone] interview arrangements for [date and time and location] and to give you some additional information.

The interview will be conducted under the powers given to me under the Local Government Act 2000 (LGA).

I will be taking notes and may be recording our conversation. If I wish to record the interview I will ask you to give your consent beforehand. If I rely on information gained during this interview in a report, I will send you a copy of the record and give you an opportunity to comment on it. If I do not send you a copy of the interview record, you may request it. It is possible that what you say at interview may be disclosed and you might be called as a witness.

Please inform me in advance if you will be accompanied and if so by whom. I estimate that the interview will take approximately [length].

I enclose the following documents that may be required during the interview:

- 1.
- 2.
- 3.
- 4.

(It is important that you have copies of these documents with you, as they may be needed during the interview.)

(It is important that you have copies of relevant documents with you, as they may be needed during the interview.)

When the investigation is finished, the Monitoring Officer will report to the Standards Committee. The Standards Committee will decide whether there has been a breach of the Code and what action should be taken including whether or not to refer the matter to the Adjudication Panel for England.

[Member/complainant/MO - Prior to completing his/her investigation you will be sent a draft of the Monitoring Officer's report to enable you to make any representations you consider necessary. Having considered these the Monitoring Officer will then issue his/her final report.]

I must also ask that you treat any information provided to you during the course of this investigation as confidential. In addition, there are statutory restrictions on the disclosure of information obtained by the Monitoring Officer. This is covered by section 63 of the LGA2000 and disclosure of information contrary to this is a criminal offence.

If you have any queries prior to the interview, please do not hesitate to contact me on [Contact Number] or by sending an email to [email address].

Yours sincerely

[Name]
Investigator

Appendix 5 - Template

Interview Plan – Interviewee _____

Ref No:

Subject Member:

Council:

Interviewer:

Date of Interview:

Nature of Complaint (Optional)

Purpose of interview

Facts already established (which relate to purpose of interview)

Facts to be established (which relate to purpose of interview)

Record of disclosure to witness before interview

Planned disclosure to witness during interview

Areas to be covered in interview	Key questions

Appendix 6 – Letter enclosing interview record/transcript

PRIVATE & CONFIDENTIAL

Dear

REFERENCE:

I write further to our [telephone] interview of [Date] and enclose [as agreed] two copies of the record/transcript taken from the interview.

Record:

I would be grateful if you could review the record and make any alterations you consider necessary from your recollection of the interview. Please then sign and date the declaration at the end of the interview record and initial the bottom of each page, returning one copy to me to the above address by [date]. Should you not sign and return a copy of the interview record by this date I will assume that you accept and agree with its content.

Transcript:

I would be grateful if you could review the transcript and make any alterations if you think there are any errors to the transcript. Please then sign and date the declaration at the end of the interview transcript and return one copy to me to the above address by [date]. If I do not hear from you by that date I will assume you accept the transcript as an accurate record of the interview.

The copy of the interview record/transcript has been provided to you solely to enable you to confirm the accuracy of the interview; it should not be disclosed or used for any other purpose. You are, however, able to disclose these documents to

your solicitor, should you choose to appoint one, or other representative, for the purpose of seeking advice in relation to this investigation.

If, on reading the interview [record/transcript](#), you have any additional comments that you feel are relevant to the investigation, please address these to me in writing in a separate document to the above address, by sending an email to [\[email address\]](#) or telephone me directly [\[contact number\]](#) Should you wish to write would you please quote the reference number on all documentation.

Yours sincerely

[\[Name of Investigator\]](#)

Investigator

Enc.

Appendix 7 – Report Template

CONFIDENTIAL

Case Reference:

**REPORT OF AN INVESTIGATION UNDER SECTION 59 OF THE LOCAL
GOVERNMENT ACT 2000 BY **XX** ETHICAL STANDARDS OFFICER, INTO AN
ALLEGATION CONCERNING COUNCILLOR **XX****

DATE

Contents

1 Executive summary

2 Councillor [X]'s official details

3 The relevant legislation and protocols

[4 The evidence gathered](#)

5 Summary of the material facts

6 Councillor [X]'s additional submissions

7 Reasoning as to whether there have been failures to comply with the Code of Conduct

8 Finding

Schedule of evidence taken into account

Chronology of Events

Executive summary

The allegation[s]

Investigation Outcome

Councillor [X]’s official details

Councillor X was elected to office on [Date] for a term of X years. [Councillor X is also a member of the following other relevant authorities.] Councillor X currently serves on the following committees; [Insert committee names] and has also served on [insert committee names] committees in recent years.

[If no longer a councillor, state how the period of office ceased]

Councillor X gave a written undertaking to observe the Code of Conduct on [Date].

Councillor X has received the following training on the Code of Conduct [insert training details].

The relevant legislation and protocols

The Council has adopted a Code of Conduct in which the following paragraph[s] is/are included.

The evidence

I have taken account of evidence from and documentary evidence obtained from

Summary of the material facts

Councillor [X]’s additional submissions

**Reasoning as to whether there have been failures to
comply with the Code of Conduct**

Finding

December 2007



Standards Committee determinations

Guidance for standards committees and
monitoring officers

DRAFT

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This guide

This guide provides information on the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 [and on other relevant regulations as introduced]* and includes practical procedural information for standards committees on how to hold a hearing. Under the regulations, standards committees must take this guidance into account.

It covers the main parts of the local determination process, including:

- referrals from the monitoring officer
- referrals from an Ethical Standards Officer (ESO);
- the pre-hearing process;
- the standards committee hearing;
- notice of findings;
- referrals to the Adjudication Panel for England for sanction and
- appeals to The Adjudication Panel for England.

This guide is for monitoring officers, Standards Committee members and subject members in:

- district, unitary, metropolitan, county and London borough councils
- police authorities
- fire authorities (including fire and civil defence authorities)
- passenger transport authorities
- the Broads Authority
- National Park authorities
- the London Fire and Emergency Planning Authority
- the Greater London Authority
- the Common Council of the City of London
- and
- the Council of the Isles of Scilly.

It also covers police authorities in Wales. However, the Commissioner for Local Administration in Wales handles allegations about members of Welsh police authorities. For this reason, references to the Ethical Standards Officer (ESO) within this guide should be read as the Commissioner for Local Administration in Wales, and references to The Adjudication Panel for England should be read as The Adjudication Panel for Wales.

Introduction

Under the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003*, an authority's monitoring officer or an Ethical Standards Officer (ESO) can refer a completed investigation report to a standards committee to determine (decide) whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.

ESOs work for The Standards Board for England but their responsibilities and powers are set out in the *Local Government Act 2000*. The Standards Board for England has power to issue general guidance to standards committees and ESOs as to how they should carry out their investigations.

An investigating officer or ESO will investigate an allegation which has been referred, to decide which of the following four findings is appropriate in the circumstances:

- 1 there is no evidence that the member has failed to follow any part of the Code of Conduct;
- 2 no action needs to be taken in relation to the matters investigated;
- 3 the matter should be referred to the standards committee of the relevant authority for local determination; or
- 4 the matter should be referred to The Adjudication Panel for England.

Standards committees should be familiar with the regulations and have effective procedures in place to make sure that they can determine cases fairly and consistently In particular with the Human Rights legislation.

The process for dealing with matters at a local level should be the same for all members, no matter what political party they represent or what level of local government they represent. Standards committees of district and unitary authorities fulfil the same role in relation to parish and town councils in their area. In this case, standards committees can set up sub-committees to deal with town and parish council matters.

A decision by a standards committee or the Standards Board for England not to refer a matter for investigation does not prevent a monitoring officer having an informal discussion with the member concerned about the incident that gave rise to the allegation and how similar incidents might be avoided in future.

The local determination process

The main purpose of the standards committee's hearing is to decide whether or not a member has failed to follow the authority's Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take. This guide provides practical guidance on all aspects on preparing and taking part in standards committee hearing.

Monitoring officer referrals

Where a monitoring officer, or his appointed representative has completed an investigation into a member's conduct, he will present a report to the relevant standards committee containing his finding as to whether the subject member has or has not failed to comply with the Code of Conduct (*subject to new regulation*). A monitoring officer can nominate another person to carry out an investigation in relation to a locally referred complaint by the standards committee or a matter referred for local investigation and/or determination by the ESO.

ESO referrals

Matters that the ESO, having completed his/her investigation, refer for local determination include:

- matters that are of an entirely local nature and do not affect broader national issues; and
- matters that do not appear to need the heavier penalties available to The Adjudication Panel for England.

However, ESOs will refer matters on a case-by-case basis as all the relevant circumstances will need to be considered. An ESO is unlikely to refer a case where it would be difficult or inappropriate to try to resolve it locally, for example, if there is an allegation that serious bullying and harassment has taken place in the authority.

When an ESO refers a matter to the monitoring officer of the relevant authority, the monitoring officer must arrange for the authority's standards committee to consider the ESO's report and determine the matter.

Under the local determination regulations, an ESO will only refer a matter to a standards committee for a hearing after completing his or her investigation. Standards committees should not re-open the investigation. However, the member who the complaint has been made about has the right to give relevant evidence to the standards committee and, if more evidence becomes available after the completion of the ESO's investigation, the standards committee may consider that evidence during the course of its hearing.

Hearings

Timing of the standards committee hearing

The standards committee must hold a hearing in relation to a complaint within three months, beginning with the day on which the monitoring officer completes the report, or, when the monitoring officer receives an ESO's report.

Once the monitoring officer has accepted the completed report, he must give a copy of that report to the subject member, the person who made the complaint, the clerk of any relevant town or parish council and the standards committees of any other authorities concerned. The hearing must take place at least 14 days after the subject member receives a copy of the report from the monitoring officer. However, the hearing can be held fewer than 14 days after the member receives a copy of the report if the member agrees.

If the subject member does not go to the hearing, the standards committee may consider the report in the member's absence. If the standards committee is satisfied with the member's reason for not being able to come to the hearing, it should arrange for the hearing to be held on another date. If the standards committee does not hear the matter within three months of receiving the completed report, the committee will be failing in its legal duty and may face judicial review proceedings.

Scheduling a hearing

Except in complicated cases, standards committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, committees should bear in mind that late-night and over-long hearings are not ideal for effective decision-making as the attention of those attending can flag. Equally, having long gaps between sittings can lead to important matters being forgotten

The pre-hearing process

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any of the findings of fact in the investigation report
- identify whether or not those disagreements are likely to be significant to the hearing
- identify whether or not evidence about those disagreements will need to be heard during the hearing
- decide whether or not there are any parts of the hearing that are likely to be held in private and

- decide whether or not any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material.

It is important to note that some matters in the pre-hearing process may be decided only by the committee or sub-committee which holds the hearing and that if it is necessary for them to meet, it will have to be done formally as with any other council committee meeting. The purpose of the pre-hearing process is to enable matters at the hearing to be dealt with more fairly, economically and quickly by alerting parties to possible areas of difficulty and enabling these, as far as possible, to be resolved before the hearing itself.

Format:

The pre-hearing process should usually be carried out in writing, although occasionally a meeting of the committee and the people involved and their representatives may be necessary. It is important for the monitoring officer advising the committee to consider these matters carefully.

The member's response:

The officer providing administrative support to the standards committee, in consultation with the Chair of the committee, should write to the subject member to propose a date for the hearing, outline the hearing procedure and the member's rights. They should also ask for a written response from the subject member, within a set time, to find out whether or not he or she:

- disagrees with any of the findings of fact in the investigation report, including the reasons for any disagreements
- wants to be represented at the hearing by a solicitor, barrister or any other person
- wants to give evidence to the standards committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public and
- can come to the hearing.

We recommend that standards committees ask parties to make clear all the disagreements with the findings of fact in the investigation report during this pre-hearing process. This will allow the committee to decide what witnesses will be needed. Standards committees should not allow members to raise new disagreements over findings of fact in the investigation report at the hearing unless there are good reasons for doing so, such as new evidence becoming available.

Members of the committee should also have regard to the outlines of evidence provided to them before the hearing, in order to identify any potential conflict of

interest or any connection with the persons involved or any other doubts in which they have with the integrity of the hearing. In such circumstances they should seek advice from the monitoring officer as soon as possible (e.g. if a witness who will be giving controversial evidence is personally known to them, or if they have any interest in any in any important element of the case).

There are model forms to help the member respond to the standards committee in Appendix 1. These include forms to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence for the standards committee (Form B).

The response of the investigating officer or the ESO:

The Standards Board for England recommends that the standards committee also invites the relevant investigating officer or ESO to comment on the member's response, within a set time, to say whether or not he or she:

- wants to be represented at the hearing;
- wants to call relevant witnesses to give evidence to the standards committee;
- wants any part of the hearing to be held in private; and
- wants any part of the investigation report or other relevant documents to be withheld from the public.

Other witnesses:

The standards committee may also arrange for any other witnesses to be present who it feels may help in determining the case, including the person who made the original complaint. However, the committee cannot order witnesses to appear or give evidence.

The pre-hearing process summary:

When the standards committee has received a response from the member concerned and the ESO or investigating officer, the Chair of the standards committee, in consultation with the legal advisor to the committee, should then write to everyone involved at least two weeks before the hearing to:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the member concerned or the ESO or investigating officer will go to or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the committee to make a ruling on this at the hearing and
- outline the proposed procedure for the hearing.

There is a checklist for this pre-hearing process summary document in [Appendix 1 \(Form F\)](#).

The hearing

The standards committee should work at all times in a demonstratively fair, independent and politically impartial way, so that members of the public and members of the authority have confidence in its procedures and findings.

Both the committee and the subject member should bear in mind throughout that the maintenance of public confidence in a council's ethical standards requires that the standards committee's decisions be seen as open, unprejudiced and unbiased. This means that all concerned should treat the hearing process with all due respect and due regard to the potential seriousness of the outcome, for the member, the council and the public. For the member, an adverse decision by the committee can result in censure, or in suspension for up to 6 months.

The model hearing procedures ([in Appendix 2](#)) are intended to give standards committees a consistent approach to determining matters locally. The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

The standards committee

Under current law, a standards committee may delegate (allocate responsibility for) determination of a case to a sub-committee composed of members of the committee, provided it includes at least one independent member. In particular, a case relating to a town or parish councillor can be delegated to a sub-committee which has been set up to deal with town and parish council matters, and which includes at least one member of the town or parish councils for which the committee is responsible (as well as one independent member).

All members of the standards committee may take part in a hearing if they choose. However, we recommend that a small number of members (three or five) take part in the determination as it is fairer and more efficient to hold a hearing before a small group.

Currently, at least three members of the standards committee, including at least one who is an independent representative of the committee, must be present at each meeting of the whole committee and the chairman must be an independent representative. If a case relates to a parish or town councillor, one of the committee members present must be a parish or town councillor. While it is not a legal requirement for a sub-committee to have an independent member as chair, to encourage confidence and remove any perception of political interference, we

recommend that when holding a hearing, a sub-committee should be chaired by an independent member.

Representatives

The subject member may choose to be represented by counsel or a solicitor, or any other person they wish. If the subject member concerned wants to have a non-legal representative, the member must tell the standards committee in advance. The standards committee should normally give permission for subject members to be represented by any person they choose, but may refuse permission if the representative is directly involved in the matter being determined or for any other good reason.

The standards committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The standards committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

The subject member must be allowed to make representations, either verbally or in writing. If the member prefers, these representations can be made through his or her nominated representative. The subject member must also be given the opportunity to give evidence to the standards committee and call witnesses to give evidence.

In many cases, the standards committee may not need to consider any evidence other than the ESO's or monitoring officer's report (and the supporting documents, if any). If more evidence is needed or if people do not agree with certain findings of fact in the ESO's or monitoring officer's report, the standards committee may need to hear from witnesses.

The standards committee can allow witnesses to be questioned and cross-examined by the subject member or the ESO or monitoring officer or their representatives or the standards committee can ask that these questions be directed through the Chair. The standards committee can also question witnesses directly.

Witnesses

The basic position is that the subject member is entitled to present his or her case in anyway they see fit which includes calling any witnesses he or she may want.

However the standards committee also has the right to govern its own procedures as long as it acts fairly. For this reason, the standards committee may choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing relevant evidence i.e. evidence that will assist the standards committee to reach its decision.

The standards committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

The basic format of a standards committee hearing

Chair opens hearing, introduces panel, parties and representatives and explains procedure.

Any preliminary issues are dealt with.

The ESO or monitoring officer presents their case.

- If there are issues of fact that are disputed then these are the first to be resolved and if witnesses are to be called, the witnesses are normally asked to leave the room until after their evidence is given. At the end of their evidence they are normally free to remain and watch the rest of the hearing if they wish.
- If the ESO or monitoring officer has witnesses, they are called and their evidence is presented. They are then cross-examined by the subject-member or their representative.
- The standards committee may then ask any questions it might have and then the ESO or monitoring officer can question the witness on any issues that might have come up in the cross-examination or questioning by the standards committee.
- After the ESO or monitoring officer has called all their witnesses, it is the subject member's turn to call his or her witnesses with cross-examination etc as above.
- The standards committee may then request the parties to make submissions on which bits of the evidence are to be accepted and why.
- After all the evidence and submissions are heard the standards committee normally retires to resolve any disputes of fact, after which it informs the parties of all the relevant facts that it has found.

- The ESO or monitoring officer is then asked to make submissions to the standards committee as to why on the facts as found by the committee, the subject member has failed to comply with any particular paragraph of the Code of Conduct.

The subject member then responds.

The standards committee then retires to consider if there has been any breach of the Code of Conduct.

The standards committee then re-convenes to deliver its decision. If it decides that there has been a breach of the Code of Conduct it then invites the ESO or monitoring officer to make submissions on what sanction should be applied. The subject member then makes his or her submissions.

The standards committee again retires to determine the appropriate sanction.

Findings

The finding of the standards committee:

Following its hearing, the standards committee can make one of the following findings:

- the member has not failed to follow the authority's Code of Conduct;
- the member has failed to follow the authority's Code of Conduct, but no action needs to be taken; or
- the member has failed to follow the authority's Code of Conduct and should be penalised.
- refer the case to the Adjudication Panel for England for determination (see page XX for further details).

Penalties

If the standards committee finds that a member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority
- restrict the member's access to the resources of the relevant authority for up to six months, which could include limiting his or her access to the premises of the relevant authority
- suspend or partly suspend the member for up to six months or
- suspend or partly suspend the member for up to six months on the condition that the suspension or partial suspension will end if the member apologises in writing,

receives any training, or takes part in any conciliation that the standards committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the standards committee.

Suspension or partial suspension will normally start immediately after the standards committee has made its decision. However, if the standards committee chooses, the penalty may start at any time up to six months following its decision. This may be appropriate if the penalty would otherwise have little effect on the member, for example, in the case of a suspension or partial suspension, if there are no authority or committee meetings which the member would normally go to in the period following the conclusion of the hearing.

Periods of suspension or partial suspension set by a Standards Committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under Section 85 of the *Local Government Act 1972*.

Deciding a penalty:

When deciding a penalty, the standards committee should make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what penalty to set, the standards committee should consider the following questions, along with any other relevant circumstances.

- What was the member's intention? Did the member know that he or she was failing to follow the Code of Conduct?
- Did the member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the member accept he or she was at fault?
- Did the member apologise to the relevant people?
- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same thing again?

So, for example, if a member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the member.

Suspension may be appropriate for more serious cases, such as those involving:

- bullying officers;
- trying to gain an advantage or disadvantage for themselves or others; or
- dishonesty or breaches of trust.

Penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a member's ability to carry out his or her responsibilities as an elected representative or co-opted member.

The Adjudication Panel for England has published some useful guidance on aggravating and mitigating factors they take into account when assessing what is the appropriate sanction. An excerpt appears below:

"8. Examples (but not an exhaustive list) of mitigating factors are:

8.1. An honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.

8.2. A members' previous record of good service.

8.3. Substantiated evidence that the member's actions have been affected by ill-health.

8.4. Recognition that there has been a failure to follow the Code; cooperation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.

8.5. Compliance with the Code since the events giving rise to the determination.

8.6. Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

9. Examples (but again not an exhaustive list) of aggravating factors are:

9.1. Dishonesty.

9.2. Continuing to deny the facts despite clear contrary evidence.

9.3. Seeking unfairly to blame other people.

9.4. Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.

9.5. Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code."

APE: Guidance on decisions available to a Case Tribunal, May 06

Notice of the standards committee's findings

The standards committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's

memories fade. The officer providing administrative support to the committee will normally also draft minutes of the meeting.

As soon as is reasonably practical after the hearing, the standards committee must give its full written decision to the relevant people. We recommend that the standards committee give its full written decision to those people within two weeks. The relevant people include:

- the member who is the subject of the finding
- the ESO concerned (if applicable)
- the standards committees of any other authorities concerned
- any parish or town councils concerned and
- any person who made the complaint.

Making the findings public

The standards committee must also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

If the standards committee finds that a member did not fail to follow the authority's Code of Conduct, the public summary must say this, and give reasons for this finding. In these cases, the member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.

If the standards committee finds that a member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the member failed to follow the Code, outline what happened and give reasons for the standards committee's decision not to take any action. If the standards committee finds that a member failed to follow the Code and it sets a penalty, the public summary must say that the member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the standards committee.

The standards committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Written decision format

Full written decision format

For consistency and thoroughness, we recommend that the standards committee use the following format for its full written decision. A model format for the full

written decision is available on our website at www.standardsboard.gov.uk (**this will need amendment**)

The front cover of the standards committee's full written decision should include:

- the name of the authority
- the name of the member who the complaint has been made about
- the name of the person who made the original complaint (unless there are good reasons for keeping his or her identity confidential)
- case reference numbers of the principal authority and The Standards Board for England (if applicable)
- the name of the standards committee member who chaired the hearing
- the names of the standards committee members who took part in the hearing
- the name of the monitoring officer
- the name of the ESO who referred the matter (if applicable)
- the name of the local investigator who investigated the matter (if applicable)
- the name of the clerk of the hearing or other administrative officer
- the date of the hearing and
- the date of the report.

The standards committee's full written decision should include:

- a summary of the complaint;
- the relevant section or sections of the Code of Conduct;
- a summary of the evidence considered and representations made;
- the findings of fact, including the reasons for them;
- the finding as to whether or not the member failed to follow the Code of Conduct, including the reasons for that finding;
- the penalties applied, if any, including the reasons for any penalties; and
- the right to appeal.

Public access, confidential information and exempt information

Public access to hearings and documents:

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.

Confidential information and 'exempt information':

The regulations state that a modified version of the rules about access to information contained in Part VA of the *Local Government Act 1972* should apply to standards committees making local determinations. This means that there is a clear presumption that hearings should be held in public. There are two

circumstances in which hearings (or parts of hearings) can or should be held in private.

1 A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.

2 The law also gives the standards committee the power to hold a private meeting to prevent 'exempt information' being revealed to the public.

The categories of 'exempt information' are those set out in Schedule 12A to the *Local Government Act 1972* (see [Appendix 3](#)). However, the regulations also provide for four other categories of 'exempt information'.

- a** Information relating to the personal circumstances of any person.
- b** Information which must be kept confidential, for example, under a contract.
- c** Information relating to national security.
- d** The deliberations of the standards committee when hearing matters.

The rules about confidential information are different from the rules about 'exempt information'. Standards committees must hold some parts of a meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

Deciding to withhold 'exempt information':

Standards committees should carefully consider any decision to withhold exempt information from the public. Although the legal position is not entirely clear, the Standards Board for England advises that standards committees should follow Article 6 of the European Convention on Human Rights, as there may be an obligation to do so under Section 6(1) of the Human Rights Act 1998. But, in any case, the standards committee has a duty to act fairly and in line with the rules of natural justice.

Please note that Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved. Article 6 is discussed in [Appendix 4](#).

If a standards committee decides to exclude the public to prevent 'exempt information' being revealed, it should only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt information', the public will only have to be excluded while that witness is giving evidence.

If evidence is heard in private, people should be warned not to mention that evidence during the public parts of the hearing, or outside the hearing. The standards committee may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

Openness during hearings:

If the hearing chooses to withdraw into private session during a hearing — for example, to consider whether the member failed to follow the Code of Conduct — it should formally exclude the parties, the public and press from that part of the hearing, in accordance with Schedule 12A of the Local Government Act 1972 as amended by the standards committee regulations. This will ensure everyone understands what is happening.

The committee should also explain to the parties, the public and press, the role of the committee's legal advisor in a private session. In addition, **the legal advisor** should report to the parties any significant legal advice given to the standards committee during private session, particularly where it may affect the decision of the committee.

Access to documents:

The statutory rules about access to information which apply to standards committees do not simply relate to public attendance at hearings. They also establish the general principle that the agenda and reports to be discussed should be available for public inspection before and during a hearing. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, must be available for public inspection for a specific period of up to six years after that hearing has taken place. The investigating officer's or ESO's report will be one of the reports before the standards committee.

The regulations also state that the agenda, reports and minutes of district and unitary authority standards committee meetings must be sent to any parish or town councils involved.

Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However, an **officer appointed by the authority** has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private. **(The Standards Board for England recommends that this power should be exercised where one of the people involved has requested that a document be kept confidential.)** *Ultimately, it should be up to standards committees to decide what meetings/hearings need to be held in public or private. Standards committee deliberations or pre-hearing meetings to consider matters in relation to*

the documents for hearings or the arrangements for hearings are to be kept private and confidential.

After a hearing, sections of the committee's reports which relate to parts of the hearing held in private will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.

When considering whether to exclude the public from a hearing, the standards committee will also need to say which parts of the reports before the committee are not to be made available for public inspection.

Final Reports (investigating officer's or ESO's reports)

Final reports should be made available for public inspection at the authority unless they contain confidential or exempt information as defined by Part VA of the *Local Government Act 1972* (as amended). Final reports produced following a local investigation are not confidential, and are not afforded the protection under section 63 of the *Local Government Act 2000* that is given to ethical standards officers' reports. The Regulations says that the final report must be sent to the subject member. In addition, whether or not there is a breach of the Code, it must also be sent to the standards committee.

In addition the final report should also be sent to the:

- person who made the complaint
- clerk of any relevant town or parish council
- ESO who referred the matter for investigation (where applicable)

So you should consider whether any part of the final report and appendices (if any) contains confidential or exempt information. If so, that exempt information should not be disclosed to the public for inspection. If the report has a finding of no breach of the Code, the final report must be considered by the standards committee and should be made available with the public agenda for the standards committee at least five clear days in advance of the meeting.

But if the report has a finding of a breach of the Code, the presumption is that standards committee hearings will be held in public unless exempt information will be discussed under Schedule 12A (as amended) of the *Local Government Act 1972*. "Exempt information" should not be disclosed to the public.

Generally, the final report and appendices (if any) should be made available with the hearing's agenda at least five clear days before the hearing, in accordance with normal committee rules for disclosure of agenda reports. However, if a request is made in advance of the hearing for it to be held in private, the final report and appendices, and any other papers provided during the pre-hearing process, should not be published or distributed to members of the public or press before the

hearing. The notice of the hearing and an agenda (without accompanying reports or papers) should be the only documents made available to the public. The agenda should state that a request for the hearing to be held in private is to be decided as a preliminary issue. The standards committee should then determine on the day of the hearing whether the whole or any part of the proceedings will be held in public or private. And if it is decided that the hearing is to be held in public, copies of the investigator's report and appendices should then be distributed to members of the public who may be present.

Witnesses

Witnesses to be handled with care:

A witness care scheme is being developed by the Standards Board for England to ensure that witnesses are kept fully informed of developments in cases in which they are involved.

The scheme is a response to concerns that witnesses were not being kept fully up to speed, and is part our commitment to provide more customer care. Under the scheme, letters will be sent to witnesses once they have been interviewed or contacted, explaining the anticipated length of the investigation and when they are likely to hear from us again.

Witnesses will also be offered a contact at the Standards Board for England with whom they can discuss aspects of their case. At the end of an investigation, witnesses will be notified of the outcome and informed if a case is referred to The Adjudication Panel for England or a standards committee for determination, regardless of whether they are required to give evidence. And if they are asked to give evidence, they will be contacted by a legal advisor and talked through the hearing process. They will also be sent a case summary once the case is completed. We hope this will keep witnesses better informed, and will be encouraging feedback to help us improve the service.

Witnesses – access to information:

The scheme will ensure that witnesses are kept better informed of events and have sufficient information should they be called to give evidence.

Suspensions, and what they mean for members

The *Local Government Act 2000* enables The Adjudication Panel for England and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct, but it does not stipulate exactly what members can and cannot do in their official capacity during the term of suspension. This has led to confusion in some authorities as to what, if any, representative roles a

suspended member can perform, what council facilities they are allowed to use, and what entitlements they can continue to receive as a suspended member.

Full suspensions

Members under full suspension should not:

1. Take part in any formal business of the authority

A member suspended by a case tribunal or standards committee is not able to take part in the formal business of the authority during the period of the suspension. Section 83(9) of the Local Government Act further provides that a suspended member should not participate in any committee or sub-committee of the authority. Suspended members should therefore not perform any official duties that follow on from their position as a member, or attend council meetings in their capacity as a member. They also should not meet council officers to conduct council business.

2. Have access to council facilities

Suspended members should not use or have access to council facilities. Under paragraph 5(b)(ii) of the Code of Conduct, council facilities should be used only "to facilitate or be conducive to the discharge of the functions of the authority or of the office to which the member has been elected or appointed". As the member is under suspension and unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority as the member would not be performing council business while suspended.

3. Receive their council allowance

Under Regulation 4(3) of the Local Authorities (Members Allowances) Regulations 2003, councils may specify in their member allowance schemes that:

"Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the *Local Government Act 2000* or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority."

We recommend that members should not receive their allowance while under suspension because they are not performing their role as a member, but the decision to withhold a member's allowance is at the discretion of the individual authority.

However, members under suspension should:

1. Make their suspended status clear

Members should put 'suspended' after their name when referring to themselves in writing as members, and notify constituents when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.

2. Make arrangements for another member to handle their constituency work

With help from their council officers, suspended members can make arrangements for other ward members — or, in the case of a single-member ward, neighbouring ward members — to take over their constituency work for the duration of the suspension, ensuring constituents continue to be democratically represented.

3. Under suspension what responsibilities remain?

Since suspended members will not be able to act in an official capacity, they will not usually be covered by the remaining provisions of the Code of Conduct. One exception to this rule would be attendance at council meetings. The Court of Appeal made it clear in the Richardson decision that members should always be regarded as attending council meetings in their official capacity. In our view, this principle should also apply to suspended members. Accordingly, we consider that a suspended member with a prejudicial interest in a particular matter should not be permitted to attend a council meeting where that matter is discussed, even just as a member of the public in the public gallery.

However, we consider that suspended members without any prejudicial interests should be permitted to attend council meetings in the same way as ordinary members of the public. Similarly if members purport to use their position as a member improperly then the code may still apply.

Partial suspensions

Members can be partially suspended under sections 83(9) and (10) of the Local Government Act 2000. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business. The terms of a partial suspension must be set by the case tribunal of The Adjudication Panel for England or standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals. A partial suspension enables the tribunal to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold the Code of Conduct at a planning committee could be suspended from taking part in planning committee meetings for

a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period. We again recommend that, for the duration of the suspension, members should not receive allowances relating to areas in which they are suspended from acting.

What can a council do when a member is suspended?

Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from his or her ward or a neighbouring ward, to take over constituency work. It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension. Once the suspension has ended, the member is free to resume his or her duties in full as a member of the authority.

Appeals to the Adjudication Panel for England

The member who is the subject of a standards committee finding may apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding.

The President must receive the member's written application within 21 days of the member receiving notice of the standards committee's decision.

In this application, the member (appellant) must outline the reasons for the proposed appeal and whether or not he or she wants the appeal carried out in writing or in person.

When deciding whether or not to grant permission to appeal, the President will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or in part.

The President will give the appellant concerned his or her written decision within 21 days of receiving the application. The President will also give his or her written decision to:

- the ESO concerned (where applicable);
- the monitoring officer concerned (where applicable);
- the standards committee that made the original finding;
- the standards committees of any other authorities concerned;
- any parish or town councils concerned; and
- any person who made the allegation.

If the President refuses to give permission, he or she will explain the reasons for that decision.

Appeal tribunals

If permission is granted, the President of The Adjudication Panel for England will arrange for a tribunal to deal with the appellant's appeal. The tribunal will be made up of at least three members appointed by the President and may include the President. Any member of The Adjudication Panel for England with an interest in the matter may not be a member of the appeal tribunal. Likewise, any member of The Adjudication Panel for England who has been a member or officer of the authority concerned within the last five years cannot take part.

If the appellant does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the member at least 21 days' notice of the date of the hearing. The appellant can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the appellant wants to have a non-legal representative, the appellant must get permission from the tribunal beforehand, who may prevent that person acting as a representative if he or she is directly involved in the case. The appeal tribunal can decide its own procedures. It is likely, however, that both the ESO and the standards committee will be given the opportunity to make representations in relation to the appeal and, in an appropriate case, to go to or be represented at the appeal hearing.

If the appellant agrees to have the appeal carried out in writing, the tribunal may still decide to hold a hearing at which the appellant can attend in person and be represented as outlined above. However, the tribunal may choose to carry out the appeal entirely through written representations.

If, after being given reasonable notice, the appellant fails to go to or be represented at an appeal hearing, the tribunal may determine the matter in the appellant's absence. However, if the tribunal is satisfied that there is a good reason for the appellant's absence, it should postpone the hearing to another date.

Outcome of the appeal

The appeal tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the standards committee.

If the tribunal upholds the standards committee's finding, or part of the finding, it may:

- approve the penalty set by the standards committee;
- require the standards committee to set a penalty if it has not already done so; or
- require the standards committee to set a different penalty to that already set.

If the tribunal dismisses the finding of the standards committee, the decision and any resulting penalty will no longer apply. The standards committee must act on any directions given by the appeal tribunal.

Notice of the appeal tribunal's decision

The appeal tribunal will give written notice of its decision to:

- the appellant of the decision;
- the ESO or monitoring officer concerned;
- the standards committee that made the original finding;
- the standards committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

The tribunal will also publish a summary of its decision in one or more of the newspapers circulating in the area of the authorities concerned.

Costs

Members are responsible for meeting the cost of any representation at a standards committee hearing or appeal tribunal. Local authorities are able to take out insurance to cover this.

The role of the monitoring officer

Monitoring officers need to be aware of the potential conflicts involved in advising the standards committee and advising members.

Advising the standards committee :

It is important that standards committees receive high quality, independent advice. For this reason, we recommend that a monitoring officer should be the main advisor to the standards committee, unless they have an interest in the matter that would prevent them from performing this role independently. If this situation arises, a monitoring officer should arrange for another appropriately qualified officer to advise the standards committee.

In advising the standards committee, the monitoring officer or other legal advisor's role is to:

- make sure that members of the standards committee understand their powers and procedures
- make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible

- make sure that the subject member understands the procedures the standards committee will follow
- provide advice to the standards committee during the hearing and their deliberations and
- help the standards committee produce a written decision and a summary of that decision.

Advising members:

Monitoring officers play an important role in advising their members on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the Standards Committee at a later stage. However, conflicts of interest are not likely to arise simply from informal discussions between members and monitoring officers. We recommend that monitoring officers consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise members; or
- continuing to advise members, identifying possible scenarios that may lead to future conflicts, and reassuring themselves that if their advice could be material to an investigation, they have another appropriately experienced officer who is prepared to support the standards committee in its hearings and deliberations. Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the standards committee.

Refer to APE for determination

By regulations under section 66 (2)(d), a standards committee, where it considers that the action it could take against a person is insufficient, can refer the case to the president of the Adjudication Panel for England for a more serious penalty to be imposed. The president of the Adjudication Panel for England can then delegate to members of that Panel or alternatively appoint members of the Panel for this purpose under any provision of section 76(6) to (12) and (15)). The Panel can then decide a penalty that may be authorised by virtue of subsection (1)(c) include any kinds of action that may be authorised in relation to a tribunal by regulations under section 78A(4) to (6).

Referring cases for determination

At the end of an investigation, if a standards committee or an ethical standards officer concludes that the Code of Conduct has been breached, they may decide to refer the case to The Adjudication Panel for England.

When deciding whether to refer a case, a standards committee or ethical standards officers can take any mitigating factors into account. For example, if the person

being investigated is no longer a member and has no intention of ever standing for public office again, and if the breach is an isolated and minor one, it may not be in the public interest to pursue sanctions by referring the case to a tribunal. This may also be the case if the member is inexperienced and has committed a first-time breach. The standards committee or ethical standards officer may decide not to refer a case if the member acknowledges their conduct and gives some assurance that it will not be repeated. Similarly, no action may be necessary if the member has apologised or taken prompt and adequate remedial action. An ethical standards officer may also decide not to refer a case if the member made an honest error, or reasonably relied on someone else's advice.

Monitoring officers are required to report back to the standards committee or an ethical standards officer on the details of their actions or their proposals for dealing with the direction. A standards committee or an ethical standards officer may, if they are unhappy with the report or the proposals, require the monitoring officer to publish a statement giving details of the direction and reasons for failing to implement the direction. It may, for example, be necessary to publicise the fact that a member is reluctant to take part in a process that has been devised to improve the functioning of the authority.

Standards committees or ethical standards officers are unable to do anything more than this, but if there are further allegations of misconduct concerning a member who has been subject to a direction then they may view the new allegations more seriously. However, the point of issuing directions is to help local authorities to resolve their own problems. This has often involved introducing new procedures, organising training for members or arranging a process of mediation, all of which can take some time to take effect. As a result, it may be too early to tell whether all of the directions have been entirely successful in tackling local problems.

For more information

For more information about this guide or about the Standards Board for England more generally, please contact us on 0845 078 8181 or e-mail enquiries@standardsboard.gov.uk. or, please visit our website at www.standardsboard.gov.uk

Toolkit

(List of Appendices and all related forms)

Appendix 1

Model documentation for the pre-hearing process

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any findings of fact in the investigating officer's report;
- decide whether those disagreements are significant to the hearing;
- decide whether to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearings that should be held in private; and
- decide whether or not any parts of the investigating officer's report or other documents should be withheld from the public, prior to the hearing on the grounds that they contain 'exempt' material.

Below is a checklist for authorities to use before the hearing. At the end of Appendix 1 is model documentation to support it. The documentation is intended to give authorities a consistent approach to help them decide what the relevant issues are before the hearing itself. It is not compulsory.

Pre-hearing process checklist for authorities

The monitoring officer must give a copy of the investigating officer's referred report to the member who the allegation has been made about.

The officer providing administrative support to the committee, in consultation with the Chair of the committee, should:

- provide a copy of the standards committee's pre-hearing and hearing procedures to the member who the allegation has been made about;
- outline the member's rights and responsibilities;
- propose a date for the hearing;
- ask for a written response from the member by a set time to find out whether he or she:
 - disagrees with any of the findings of fact in the investigating officer's report, including the reasons for disagreement;
 - wants to be represented at the hearing by a solicitor, barrister or any other person, noting that the committee will normally give permission for members to be represented by people who are not lawyers, but

- may refuse permission if the representative is directly involved in the matter being determined;
- wants to give evidence to the standards committee, either verbally or in writing;
 - wants to call relevant witnesses to give evidence to the standards committee;
 - can come to the hearing on the proposed date;
 - wants any part of the hearing to be held in private; and
 - wants any part of the investigating officer's report or other relevant documents to be withheld from the public;

send a copy of the member's response to the investigating officer and invite the investigating officer to say by a set time whether he or she:

- wants to be represented at the hearing;
- wants to call relevant witnesses to give evidence to the standards committee;
- wants any part of the hearing to be held in private;
- wants any part of the investigating officer's report or other relevant documents to be withheld from the public; and
- wants to invite any other witnesses the committee feels are appropriate.

The Chair of the committee, in consultation with the legal advisor to the committee, should then:

- confirm a date, time and place for the hearing;
- confirm the main facts of the case that are agreed
- confirm the main facts which are not agreed;
- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing; and
- provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

Checklist for members

The officer providing administrative support to the committee, in consultation with the Chair of the committee, should make sure that the member who the allegation has been made about is aware of the following points.

- pre-hearing process

The member concerned has the right to:

- go to the hearing and present his or her case;
- call a reasonable number of witnesses to give relevant evidence to the standards committee; and

- be represented at the hearing by a solicitor, barrister or any other person, noting that the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.

Any disagreements with the finding of facts in the investigating officer's report must be raised during the pre-hearing process. The standards committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The member does not have to go to the hearing or be represented. If the member chooses not to go to the hearing, the committee may make a determination in his or her absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the standards committee is persuaded that there is a good reason to exclude the public, in line with the relevant access to information and human rights legislation.

- **hearing process**

After considering the written and verbal presentations, the standards committee will reach and announce its findings of fact, whether or not the member has failed to follow the Code of Conduct and whether or not a penalty should be set. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the standards committee will give the member concerned its full written decision within two weeks of the end of the hearing.

If the standards committee decides that the member has failed to follow the Code of Conduct and that the member should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority;
- restrict the member's access to the resources of the relevant authority for up to six months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the member for up to six months; or
- suspend or partly suspend the member for up to six months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the standards committee orders them to. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter set out by the standards committee.

Penalties may start immediately or up to six months after the hearing, if the standards committee wishes.

The standards committee will also arrange to publish a summary of its findings and any penalty set in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. If the standards committee finds that the member has not broken the Code, the member can ask the standards committee not to have this information published.

The member who is the subject of a standards committee finding has the right to apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding.

Pre-hearing process forms (to be added at a later date)

These forms are a guide only. Authorities should prepare their own forms as appropriate.

***Form A** provides an example table to help the member identify any disagreements about the findings of fact in the investigating officer's report.*

***Form B** helps the member set out any other evidence that is relevant to the allegation.*

***Form C** helps the member set out any representations the standards committee should take account of if the member is found to have broken the Code of Conduct.*

***Forms D and E** cover details of the hearing and the witnesses who will give evidence.*

***Form F** is a checklist of what should be included in the pre-hearing process summary.*

Checklist for the pre-hearing process summary

After the standards committee has received responses from the member who the allegation has been made about and the investigating officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

- the name of the authority;
- the name of the member who the allegation has been made about;
- the name of the person who made the original allegation (unless there are good reasons to keep his or her identity confidential);
- case reference numbers of the principal authority and the Standards Board for England;
- the name of the standards committee member who will chair the hearing;
- the name of the monitoring officer;
- the name of the ESO who referred the matter (if applicable);

- the name of the clerk of the hearing or other administrative officer;
- the date the pre-hearing process summary was produced;
- the date, time and place of the hearing;
- a summary of the allegation;
- the relevant section or sections of the Code of Conduct;
- the findings of fact in the investigating officer's report that are agreed;
- the findings of fact in the investigating officer's report that are not agreed;
- whether or not the member or the investigating officer will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- an outline of the proposed procedure for the hearing.

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Appendix 2

Model hearing procedures for the standards committee

The standards committee needs to have an efficient and effective hearing process. This will help the committee to deal with all the issues that need to be resolved in a way that is fair to the member. It will also reduce the prospects of any successful appeal.

These model procedures are intended to give standards committees a consistent approach to determining matters locally. They are based on a model developed by Peter Keith-Lucas of Wragge and Co Solicitors.

The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

Interpretation

1. 'Member' 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 member's nominated representative.
2. 'Investigator' means the monitoring officer or other investigating officer, and his or her nominated representative.
3. 'Committee' also refers to 'a standards sub-committee'.
4. 'Legal advisor' means the officer responsible for providing legal advice to the standards committee. This may be the monitoring officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

5. The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

6. 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.

Setting the scene

7. After all the members and everyone involved have been formally introduced, the Chair should explain how the committee is going to run the hearing.

Preliminary procedural issues

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

Making findings of fact

9. After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
10. If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
11. 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 committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
12. The member should then have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
14. If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:
 - a continue with the hearing, relying on the information in the investigator's report;

b allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or

c postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.

16. The committee will usually move to another room to consider the representations and evidence in private.

17. On their return, the Chair will announce the committee's findings of fact.

Did the member fail to follow the Code?

18. The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

19. The member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.

20. The committee should then consider any verbal or written representations from the investigator.

21. The committee may, at any time, question anyone involved on any point they raise on their representations.

22. The member should be invited to make any final relevant points.

23. The committee will then move to another room to consider the representations.

24. On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

If the member has not failed to follow the Code of Conduct

25. If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

If the member has failed to follow the Code

26. If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:

- a whether or not the committee should set a penalty; and
- b what form any penalty should take.

27. The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

28. The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what penalty should be.

29. On their return, the Chair will announce the committee's decision.

Recommendations to the authority

30. After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

31. The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

Appendix 3

Categories of exempt information under Schedule 12A of the *Local Government Act 1972* (as modified in relation to local determinations by standards committees)

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*.

* Source: Appendix 3 is an extract from the *Local Government Act 1972* (as modified in relation to local determination by standards committee).

Please note that Plain English Campaign's Crystal Mark does not apply to Appendix 3

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Appendix 4

Excluding the public from 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 committee). 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 power to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed in Appendix 3. 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 national 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 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 wellbeing 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 in a democratic society’. A measure will only be ‘necessary’ if it meets ‘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. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

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December 2007



Monitoring and Reporting

Guidance for standards committees and
monitoring officers

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Monitoring and Reporting Guidance

This Guide

The *Local Government and Public Involvement in Health Act 2007* created a strategic regulatory role for the Standards Board for England, giving it responsibility to monitor and assess how authorities manage their local conduct framework. These changes appear in the *Local Government Act 2000*, as amended by the *Local Government and Public Involvement in Health Act 2007*, referred to in this guide together as “the act”.

This guide provides information on the Standards Board’s approach to its monitoring function and the powers available to it.

It covers the following:

- Information required by the Standards Board, for example. periodic returns.
- What would prompt the Standards Board to engage with an authority; and what form this would take.
- Suspension of a standards committee’s functions.
- Re-instating a standards committee’s functions.

Under the regulations, standards committees and monitoring officers must take this guidance into account. It is for monitoring officers and standards committee members of:

- district, unitary, metropolitan, county and London borough councils
- police authorities
- fire authorities (including fire and civil defence authorities)
- passenger transport authorities
- the Broads Authority
- National Park authorities
- the London Fire and Emergency Planning Authority
- the Greater London Authority
- the Common Council of the City of London and
- the Council of the Isles of Scilly.

It also covers police authorities in Wales. However, the Commissioner for Local Administration in Wales handles complaints about members of Welsh police authorities. For this reason, references to The Adjudication Panel for England should be read as The Adjudication Panel for Wales.

Introduction

The *Local Government and Public Involvement in Health Act 2007* introduced two key changes to the way in which compliance with the Code of Conduct is managed:

- A locally managed conduct framework with standards committees making initial assessments of complaints about members, in addition to the investigations and determinations already made at a local level.
- A revised strategic role for the Standards Board to provide supervision, support and guidance for local authorities to ensure the effectiveness of the local standards framework.

From April 2008 when a standards committee receives a complaint it must decide whether to:

- Refer the complaint to the monitoring officer of the authority for investigation.
- Refer the complaint to the Standards Board or
- Decide that no further action should be taken in relation to the complaint.

Standards committees will be also able to direct the monitoring officer to carry out alternative actions to an investigation such as mediation or training to address issues within the authority concerned.

Following an investigation, standards committees may also refer cases to the Adjudication Panel for England where the committee considers the action it could take against a member is insufficient.

Relevant authorities are required to provide the Standards Board with information about how they are operating the conduct framework to enable the Standards Board to monitor and assess compliance.

Monitoring

The Standards Board monitors the performance of the local conduct framework and seeks to improve performance by:

- Collecting information on a periodic basis from authorities.
- Offering support and guidance where authorities may be experiencing difficulties.
- Sharing good practice.
- Using the statutory powers available to remove local powers but only after efforts to support the authority have been unsuccessful.

Reporting

The act requires authorities to provide information to the Standards Board in two ways.

Firstly, under section 66B of the act, relevant authorities need to submit periodic returns to the Standards Board in the form of quarterly returns and an annual report. The information required by these returns is specified by the Standards Board.

Secondly, under section 66C, the Standards Board may request information from individual authorities on an ad hoc basis.

This information is analysed to identify problem areas and effective practice.

Quarterly returns

The Standards Board requires authorities to report to it on a quarterly basis about how their authority is managing the local conduct framework.

Quarterly reports should be submitted online via the Standards Board's reporting site. The reporting site can be found at:

[INSERT WEBSITE LINK]

Authorities will have received a link and secure password to access the site. From here a form, similar to the one below, will appear, ready for completion.

[INSERT PICTURE OF QUARTERLY RETURN]

The quarterly return form has been designed proportionate to our needs and requests only the information required by the Standards Board.

A step-by-step guide to completing the online report appears on the website and in the Toolkit at # [Toolkit – Provide practical information about how to navigate the Site] If you have any difficulties accessing or completing the online form please contact xxxxxxxxxxxx

Towards the end of each quarter, the Standards Board will send authorities a reminder to complete and submit the report for that quarter.

Annual returns

Once a year, the Standards Board will ask for a fuller report, which will be completed and submitted in the same way as the quarterly report through our online reporting site.

The annual report requires more information than the quarterly report. It requests information about wider ethical governance arrangements including the composition of the standards committee, its terms of reference, its plans, its arrangements for training and induction of members and an assessment of its impact on the ethical standards in the authority in the previous year.

The standards committee's annual report can be submitted with the quarterly return after it has been signed off by the authority's full council or equivalent.

A model template for the annual report appears in the Toolkit at #.

It should be noted that authorities which do not receive any allegations under the Code of Conduct for a quarterly period or for the entire year are still required to complete their quarterly and annual returns. Although this will be simply to report that there have been no changes.

Purpose for submitting quarterly and annual returns

The information collected is used for the following purposes:

- To monitor how the local conduct framework is operating.
- To share guidance and good practice recommendations.
- To determine whether reasonable and fair decisions are being made.
- To help us understand and assist authorities which may be having difficulty in operating the local system.

In assessing the information collected from the quarterly and annual returns the Standards Board will look in particular at the following:

- The timeliness of standards committee referral and review decisions.
- The timeliness of carrying out investigations and hearings.
- The outcomes at different stages of the assessment process.
- Any problems in meeting the statutory requirements of the local conduct framework.

To share good practice and to help authorities to understand and improve their own performance the Standards Board will publish findings on its assessments of the information.

A national report on trends will be published annually. The report includes trends and statistics about the numbers of complaints received by authorities and also information about the time taken to resolve complaints under the Code of Conduct.

The Standards Board also intends to publish information on the information it collects, where it feels this will help support authorities improving their performance. The information the Standards Board publishes could reflect national trends, be based on groupings of similar authorities or, in the case of spreading good practice, be based on one authority.

All information is handled in compliance with the Standards Board's duties to maintain confidentiality and in accordance with data protection and freedom of information legislation. Any support, guidance or advice produced does not include publishing details of individual cases and is in accordance with the Standards Board's publication policy which appears at:

[INSERT REFERENCE].

Other sources of information

In line with our strategic approach to regulation, the Standards Board, in addition to the periodic reports, takes the following information into consideration in assessing how relevant authorities are managing the local conduct framework:

- Direct contact from the public, authority staff or members, or the media.
- Matters brought to light during the ethical standards officer's investigation.
- Trends or issues highlighted in the monitoring of complaints.
- Annual governance statements produced by the authority.
- Information received from other regulators (see section on information sharing).

Random sampling of referral decisions and investigative processes is used to continually test the accuracy of the data returned to the Standards Board and the effectiveness of the Standards Board's monitoring system. Therefore, authorities may be contacted to provide further information in addition to the required reporting. A request of this nature will be made on a random basis and does not reflect an authority's performance. However, if the Standards Board makes a request for information under section 66C of the act, the relevant authority must comply with the request.

Information sharing

The Standards Board has information sharing protocols (under formal memoranda of understanding - which are available on the Standards Board's website at www.standardsboard.gov.uk) with the Audit Commission and the Local Government Ombudsman in order to:

- reduce the burden on authorities in terms of reporting requirements
- provide a fuller picture of each authority's performance
- encourage relationships between regulators

The information shared includes both statistical data as well as more qualitative information.

Engagement: How we act on the information we receive

This part of the guide explains what the Standards Board may do if the information we collect from an authority suggests it is having difficulty managing the local conduct framework effectively.

The Standards Board takes a 'light touch' approach to monitoring and engagement. Our monitoring function is based on transparency and improvement.

What will prompt the Standards Board to engage an authority?

If the information collected highlights that an authority is having difficulty performing any of its functions – including (but not limited to) the operation of the initial assessment, local investigations or hearings – in the first instance, the Standards Board will offer support to the authority.

The Standards Board decides on an authority-by-authority basis whether to engage with that authority and what type of engagement is appropriate in the circumstances. Engagement is at the discretion of the Standards Board, even if it is requested by a concerned member of the public or the relevant authority itself. Our engagement will be proportionate to any failing or difficulty identified and tailored to the needs of that authority.

What will engagement look like?

The Standards Board uses a risk-based approach to its monitoring and engagement. A low level finding is not likely to instigate engagement from the Standards Board but we may, for example, send a reminder in the form of a letter for failing to submit a quarterly return on time. However, for persistent failures, or if deliberate non-compliance is found, an authority can expect progressively more involvement from the Standards Board.

Persistent non-compliance could prompt a letter to the chief executive and/or monitoring officer of the authority outlining the issues that need to be addressed. Should the Standards Board feel the issue remains unsolved or extra help is needed, it may arrange a meeting with the chief executive or monitoring officer to discuss the issues further. At this stage the Standards Board may consider that an action plan is necessary. The Standards Board may require additional information from an authority so that an action plan can be devised to improve that authority's performance. If this is the case the Standards Board will also want to monitor the action plan.

Should an authority fail to respond to a request for an explanation or offer of support, this will result in the matter being escalated.

In situations where we consider it appropriate, the Standards Board may direct the standards committee or the monitoring officer of an authority to take certain action. A direction can be made under section 57A(6) of the act in relation to the standards committee's initial assessment function. In addition, an ethical standards officer may direct that a monitoring officer deal with a matter in accordance with a direction under Rule 5 of the *Local Authorities (Code of Conduct)(Local*

Determination) Regulations 2003. For example, we may direct the monitoring officer to make recommendations to their standards committee about the wider issues for the authority that we have identified. Monitoring officers should report back to the Standards Board within a specified period and on the matters set out in the direction including (but not limited to) the outcome of your actions or with details of your proposed actions.

If the Standards Board is not satisfied with the action taken or proposed to be taken, it may require the authority to arrange for the publication of a statement giving details of the direction and the authority's reasons for not fully implementing the direction.

Only as a last resort, usually after a series of attempts to improve performance have failed and the result is a breakdown in the assessment process of the standards committee, will the Standards Board use the power to suspend a standards committee's function of undertaking initial assessments of new complaints about members.

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Suspension of standards committee functions

The Standards Board may direct, under section 57D of the act, that the initial assessment function of a standards committee be suspended and be undertaken by the Standards Board or another relevant authority. This means the authority will no longer make the initial assessment of complaints. Any complaints received by an authority must be passed to the Standards Board under these circumstances.

This part of the guide explains how a suspension works in practice, what it entails for standards committees with suspended functions and the steps for removing a suspension.

Circumstances for suspending a standards committee's functions

The circumstances whereby the Standards Board may make a direction under section 57D (withdrawing the initial assessment function) are broadly defined in the Regulation ##. It encompasses any circumstances where the Standards Board is satisfied that a suspension of a standards committee's functions would be in the public interest. The circumstances are not limited to failures to carry out the assessment function and may be in relation to any or all functions of a standards committee.

Procedure for suspension of functions and the re-instatement functions

1 Notice of intention to suspend functions

The power to suspend a standards committee's initial assessment function is seen as a last resort measure by the Standards Board. Accordingly, where it is believed suspension is required, the authority is given a final opportunity to avoid suspension.

Before a direction to suspend, the Standards Board will send the monitoring officer a written notice of intention to suspend the initial assessment functions of the standards committee. The notice may include recommendations and directions.

If, at this stage, the authority wishes to avoid suspension, the monitoring officer should notify the Standards Board of the reasons for retaining the initial assessment function and what actions will be taken to address the authority's performance.

The Standards Board may work with the relevant authority to avoid suspension. However, at any time during the ##[4?] months after the date of the notice of intention to suspend, the Standards Board may make a direction without further notice.

2 *Direction that functions are suspended*

The Standards Board may, by written direction sent to the relevant authority's chief executive, suspend the initial assessment function of the authority under section 57D of the act. The standards committee's functions are suspended from the date specified in the written notice of direction from the Standards Board.

Under Regulation ##, standards committees must publish a notice of any decision by the Standards Board to suspend the functions of that standards committee in a local newspaper distributed throughout the area of the authority.

The suspended authority is required to support and cooperate with the Standards Board (or the other specified body under section 57D(2)) to ensure the initial assessment function is carried out appropriately and to re-instate the standards committee's functions in the shortest possible time.

The notice of direction from the Standards Board will require the monitoring officer to:

- forward to the Standards Board or another relevant authority any complaint received by the standards committee under section 57A of the act on or after the date specified in the notice; and
- report to the Standards Board within a prescribed period [20 working days – needs to be clarified] of receipt of a notice of direction, on any matters required by the Standards Board in the direction notice.

It may be possible to seek judicial review of the Standards Board's decision to suspend a standards committee's functions. There are time limits on making an application for judicial review and we strongly recommend that legal advice be sought as soon as possible when considering action of this kind.

3 *Revoking the direction and re-instating the initial assessment function*

To remove a suspension and re-instate the initial assessment function, the suspended authority is required to demonstrate improvement in its ability to carry out the function(s) that prompted the suspension.

A direction to suspend the functions may be revoked by the Standards Board where it is satisfied that the suspension should cease. The revocation takes effect from the date specified in the notice of revocation.

Under Regulation #, standards committees must publish a notice of any decision by the Standards Board to revoke its decision to suspend the functions of that standards committee in a local newspaper distributed throughout the area of the authority.

Power to charge suspended authorities

Under Regulations ##, the Standards Board or the other relevant authority undertaking a suspended authority's functions under section 57C of the act may charge the suspended authority for carrying out the function on its behalf. This reflects similar powers provided to the Audit Commission in relation to ##.

What must a suspended authority do during the suspension period?

There are two parallel aims during suspension that require standards committees and monitoring officers to work closely with the Standards Board. These aims are:

- To improve the authority's performance and its ability to carry out the function(s) that prompted the suspension so that the standards committee's function can be re-instated in the shortest possible time.
- To assist the Standards Board or the other relevant authority while it undertakes the initial assessment function.

Under Regulation ##, monitoring officers and standards committees are responsible for improving the authority's performance and working with the Standards Board (or another relevant authority) while it undertakes the initial assessment function of the suspended authority. For example, standards committees and monitoring officers must provide the Standards Board or another relevant authority with access to documents required to carry out the functions of the standards committee.

The monitoring officer and the chair of the standards committee may be required to meet with the Standards Board to develop an action plan for improving the authority's performance.

The Regulations ## provide the Standards Board with powers to ensure the authority complies with an action plan. Standards committees and monitoring officers must comply with any directions of the Standards Board, for example, in relation to preparing the standards committee to resume its functions or while the Standards Board or another relevant authority carries out the functions of the standards committee.

If requested by the Standards Board, monitoring officers may be required to prepare a report for the Standards Board on actions taken by the standards committee in preparation for resuming all its functions.

In addition, monitoring officers may be required to:

- Arrange a meeting with the Standards Board and any person of the relevant authority required by the Standards Board (including the monitoring officer and members of the standards committee) to plan for the standards committee to resume all functions.
- Make any other arrangements at the reasonable request of the Standards Board.

- Make a report or recommendations to the standards committee in respect of any directions or requests for information from the Standards Board.

Throughout the suspension period, the Standards Board will provide various types of support to the relevant authority including (but not limited to) advice and guidance, sharing best-practice or making recommendations that the authority participate in peer reviews with other authorities, undertake training or that a standards committee enter into a joint arrangement with the standards committee of another authority. .

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Contents of Toolkit

Practical information about how to navigate the Standards Board's website when submitting returns.

A model template for the annual report.

Annual Report
Required fields in the form of check boxes certifying that the report contains the following:
1. Chair's introduction
<ul style="list-style-type: none">• To give context and structure to the report• To provide an assessment of complaints handling during the year• To provide an assessment of the impact of the standards committee on the authority's ethical standards
2. The year in review to include consolidated quarterly return data
<ul style="list-style-type: none">• The main outputs for the year relating to complaint handling based on the consolidated quarterly return
3. Policy for complaint handling under the Code of Conduct
<ul style="list-style-type: none">• Check box indicating that a policy for complaint handling under the Code of Conduct is in place• Check box indicating that the policy is accessible – in the annual report, on the website etc.
4. Authority statement on complaint handling according to the complaint handling policy
<ul style="list-style-type: none">• Check box indicating that all complaints have been handled in accordance with the complaint handling policy, for example:• We will acknowledge your written complaint to us in ? working days• We will advise you in writing whether your complaint is a matter that the Standards Committee may be able to assist you with in ? working days• Keep you informed about the progress of your complaint on a 4 weekly basis• Explain to you the reasons for any decision we make.• Additional field for each complaint not handled in accordance with the complaint handling policy.
5. Form, composition and membership of standards committee
<ul style="list-style-type: none">• Check box indicating up-to-date details of the form, terms of reference/composition and membership of the standards committee are available and accessible – in the annual report, on the website etc.

6. How often the standards committee met in the previous year

- For ordinary meeting/filtering/reviews/hearings/investigations/determinations

7. Role and function of the standards committee

- Check box indicating details of the procedure, role and function of the standards committee are available and accessible – in the annual report, on the website etc.

8. Protocol on member induction, training and development

- Check box indicating protocol on member induction, training and development are available and accessible – in the annual report, on the website etc.

9. Obtaining dispensation from the effects of prejudicial interest

- Self explanatory

10. Agreed by the authority / date of meeting

- Agreed at full council or equivalent

11. Link to standards committee annual report to be sent to attached to be placed on Standards Board website

- Self explanatory