
SUMMARY REPORT

**PROCEDURE FOR THE ASSESSMENT, INVESTIGATION AND DETERMINATION
OF COMPLAINTS AGAINST MEMBERS**

Responsible Cabinet Member - Councillor John Williams, Leader

Responsible Director - Paul Wildsmith, Director of Corporate Services

Purpose of the Report

1. The purpose of this report is ask Members to approve the Procedure for the Assessment, Investigation and Determination of Complaints against Members.

Summary

2. The Local Government and Public Involvement in Health Act 2007 has given Standards Committees the role of undertaking the initial assessment of misconduct allegations in place of the Standards Board for England.

Recommendation

3. It is recommended that Members :-
 - (a) Approve the Procedure for the Assessment, Investigation and Determination of Complaints against Members.
 - (b) Approve consequential amendments to the role and function of the Standards Committee that are set out in the Constitution.

Reason

4. The recommendations are supported to enable the Standards Committee to discharge the initial assessment and review functions that it has taken on as a result of the implementation of the Local Government and Public Involvement in Health Act 2007

Catherine Whitehead
Borough Solicitor and Monitoring Officer

Background Papers

The Standards Committee (England) Regulations 2008 – No.1085
Guidance from the Standards Board ‘ Local Assessment of Complaints’

Luke Swinhoe : Extension 2055

S17 Crime and Disorder	There are no issues in relation to Crime and Disorder.
Health and Well Being	There are no issues in relation to Health and Wellbeing.
Sustainability	There are no issues in relation to Sustainability
Diversity	There are no issues relating to Diversity which this report needs to address
Wards Affected	This report affects all wards equally.
Groups Affected	There is no impact on any particular group.
Budget and Policy Framework	This report does not recommend any change to the Budget or Policy Framework.
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	This report does not adversely impact on the Strategy

Background

5. The Standards Committee (England) Regulations 2008 were laid before Parliament on the 17 April 2008 and came into force on the 8 May 2008. They set out in detail the way in which the local assessment function is to be discharged by Standards Committees.
6. In complying with its obligations under the regulations, Standards Committees are also required to take account Guidance published by the Standards Board. Guidance entitled 'Local Assessment of Complaints' was published by the Standards Board on the 2 May 2008.

Information and Analysis

7. In carrying out the local assessment function Standards Committees are required to appoint two separate sub committees; the Assessment Sub Committee, and the Review Sub Committee.
8. While the Regulations, supplemented by the Guidance, set out the detail of how the initial assessment function is to be dealt with, the existing Council procedures that govern the work of the Standards Committee also require revision and amendment to take account of the new local assessment and review functions.
9. The current Procedure of the Standards Committee only deals with the local investigation and determination of complaints. This has been revised include specific reference to the initial assessment and review functions and to deal with any consequential amendments that have been necessitated.
10. A copy of the revised procedure, which is now entitled ' Procedure for The Assessment, Investigation and Determination of Complaints against Members' is attached as **Appendix A**.
11. In particular Members may wish to note 'The Initial Assessment Criteria' in Annex 1 of the Procedure sets out criteria to be used by the Assessment and Review Sub Committees to provide a framework to help with the initial assessment evaluation of complaints.
12. The Standards Committee have considered the Procedure for The Assessment, Investigation and Determination of Complaints against Members and recommend that the Council approve it.

DARLINGTON BOROUGH COUNCIL

STANDARDS COMMITTEE

ALLEGATIONS OF MISCONDUCT BY MEMBERS

**PROCEDURE FOR THE ASSESSMENT, INVESTIGATION AND
DETERMINATION OF COMPLAINTS AGAINST MEMBERS**

Introduction

This note sets out the procedure which will be followed in the assessment, investigation and determination of allegations of misconduct by Members. It applies to complaints about the conduct of all who are signatories to Darlington Borough Council's ("the Council") Code of Conduct for Council Members. The signatories include elected Members and co-opted Members with voting rights. The note also applies to complaints about the conduct of all who are signatories to the Codes of Conduct of Parish Councils within the Council's administrative area. The Council has also resolved that the same procedure shall apply to the investigation of allegations of breaches of the Council's local protocols, insofar as they apply to Councillors. The sanctions under the statutory regulations are not, however, available for breaches of local protocols.

The person making the complaint is referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. No departure will be made from this procedure unless and until the Monitoring Officer (the Borough Solicitor or such other Officer as may be appointed by the Council from time to time) ('the MO') has first notified the Member and the Complainant of the proposed variation to the procedure and the reasons for that variation.

2. Brief Summary of the Procedure

When a complaint is made to the Standards Committee about the conduct of a Member, it will first be referred to a sub committee of the Standards Committee, the Assessment Sub Committee. The role of this sub committee is to undertake an initial assessment of the complaint and to decide whether:

- To refer the complaint to the MO for for the complaint to be investigated
- To refer the complaint to the MO for steps other than investigation (such as to seek to effect conciliation or Member re training)
- To refer the complaint to the Standards Board for England (if the Standards Board is the more appropriate body to consider the complaint)

- To ask for additional information from the complainant before concluding the initial assessment
- No action should be taken in respect of the complaint.

If the Assessment Sub Committee decides that there should be no action taken about the complaint the complainant has the right to request a review of the decision. The review will be undertaken by a differently composed sub committee of the Standards Committee, the Review Sub Committee.

The Review Sub Committee will approach the assessment decision afresh and has the same range of possible decisions that it can arrive at as the Assessment Sub Committee.

If a complaint is referred for local investigation then the MO will make arrangements for the complainant to be investigated. This could be undertaken by the MO personally, but will normally be referred to another senior officer or to an external investigator. The investigator will seek to interview witnesses and obtain all relevant papers.

When the investigation is completed a report will be prepared. This will be considered by the Standards Committee. If the Standards Committee determine that there is a case to answer then a formal hearing will be convened to consider the allegation.

At this hearing the investigator will present his report and witnesses may also give evidence and be asked questions. The Member will be present and will be able to ask questions and make representations. At the end of the hearing the Standards Committee will need to decide whether the Member has broken the Code of Conduct. If the Standards Committee decide the Member has broken the Code it will hear representations from the MO and from the Member as to any action which the Committee should take in respect of the Member.

The actions which the Committee may take against the Member may include censuring the Member, requiring a written apology from the Member, requiring the Member to undergo training, requiring the Member to participate in conciliation, imposing restrictions from the Members access to local authority premises or resources for up to 6 months and suspending, or partially or conditionally suspending the Member from being a Member of the Council for a period not exceeding 6 months.

3. Local Assessment and Review

(a) Receipt of Complaint

When a written complaint is received that alleges that a Member has broken the Code of Conduct, the MO will acknowledge receipt of the complaint with the complainant and refer the complaint to the Chair of the Assessment Sub Committee.

- (b) The Assessment Sub Committee will be comprised of 3 Members of the Standards Committee. The Chair of the Assessment Sub Committee must be an Independent Member of the Standards Committee. The Assessment Sub Committee must have at least one Borough Council Member. If the Member Complained about is a Parish Councillor then the other Assessment Sub Committee Member must be a Parish Council Member
- (c) The Member complained about will not at this stage be notified that a complaint has been received.
- (d) The Chair of the Sub Committee will convene a meeting of the Assessment Sub Committee as soon as is practicable. The Assessment Sub Committee should aim to complete the initial assessment within 20 working days from the complaint having been received.
- (e) The Assessment Sub Committee will decide whether:
 - To refer the complaint to the MO for the complaint to be investigated
 - To refer the complaint to the MO for steps other than investigation (such as to seek to effect conciliation or Member re training)
 - To refer the complaint to the Standards Board for England (if the Standards Board is the more appropriate body to consider the complaint)
 - To ask for additional information from the complainant before concluding the initial assessment
 - No action should be taken in respect of the complaint.

In considering the initial assessment decision the Assessment Sub Committee will take into account the Initial Assessment Criteria (see Annex 1), relevant legislation, Guidance from the Standards Board for England and legal advice from the Monitoring Officer

- (f) A written decision of the Assessment Sub Committee providing a summary of the main points considered and the conclusion reached will be sent to the complainant, the member and the parish council (if the member is a parish council member).
- (g) The written decision will include the name of the member who was the subject of the allegation, unless such disclosure is not in the public interest or would prejudice any investigation.

- (h) If the Assessment Sub Committee consider that it is contrary to the public interest or would prejudice any person's ability to investigate the allegation they may decide not to provide the member (and any parish council they are a member of) with a written summary of the allegation.
- (i) If Assessment Sub Committee decided to refer the complaint to the MO for steps other than investigation the MO shall within 3 months of the referral submit a written report to the Sub Committee giving details of the action taken or proposed to comply with the direction.
- (j) If the Assessment Sub Committee is satisfied with the steps taken by the MO it shall give written notice to the member (and parish council concerned), the complainant and the standards committee of any other authority concerned.
- (k) If the Assessment Sub Committee is not satisfied with the action set out in the report it shall give a further direction to the MO.

(l) Review

If the Assessment Sub Committee decides not to take any action about a complaint then the complainant can request a review of the decision. The request for a review must be made in writing and submitted no later than 30 days after the written decision of the Assessment Sub Committee was made.

- (m) When a written request for a review is received, the MO will acknowledge receipt of the review request with the complainant and refer the matter to the Chair of the Review Sub Committee.
- (n) The Review Sub Committee will be comprised of 3 Members of the Standards Committee, who have not previously decided how to deal with the complaint as members of the Assessment Sub Committee. The Chair of the Review Sub Committee must be an Independent Member of the Standards Committee. The Review Sub Committee must have at least one Borough Council Member. If the Member Complained about is a Parish Councillor then the other Review Sub Committee Member must be a Parish Council Member.
- (o) The Member complained about will not at this stage be notified that a review request has been received.
- (p) The Chair of the Sub Committee will convene a meeting of the Review Sub Committee as soon as is practicable. The Review Sub Committee

should aim to be able to complete the review within 20 working days from the review request having been received.

- (q) The Review Sub Committee will decide whether:
- To refer the complaint to the MO for the complaint to be investigated
 - To refer the complaint to the MO for steps other than investigation (such as to seek to effect conciliation or Member re training)
 - To refer the complaint to the Standards Board for England (if the Standards Board is the more appropriate body to consider the complaint)
 - To ask for additional information from the complainant before concluding the initial assessment
 - No action should be taken in respect of the complaint.

In undertaking the review the Review Sub Committee will consider the complaint afresh taking into account the Initial Assessment Criteria (see Annex 1), relevant legislation, Guidance from the Standards Board for England and legal advice from the MO

- (r) A written decision of the Review Sub Committee providing a summary of the main points considered and the conclusion will be sent to the complainant, the member and the parish council (if the member is a parish council member).
- (s) The written decision will include the name of the member who was the subject of the allegation, unless such disclosure is not in the public interest or would prejudice any investigation.
- (t) If the Review Sub Committee consider that it is contrary to the public interest or would prejudice any person's ability to investigate the allegation they may decide not to provide the member (and any parish council they are a member of) with a written summary of the allegation.
- (u) If Review Sub Committee decided to refer the complaint to the MO for steps other than investigation the MO shall within 3 months of the referral submit a written report to the Sub Committee giving details of the action taken or proposed to comply with the direction.
- (v) If the Review Sub Committee is satisfied with the steps taken by the MO it shall give written notice to the member, the parish council (if the member is a parish council member), the complainant and the standards committee of any other authority concerned.
- (w) If the Review Sub Committee is not satisfied with the action set out in the report it shall give a further direction to the MO.

- (x) Referral back by the Standards Board for England

If a complaint has been referred to the Standards Board because it was decided that this was a more appropriate body to consider the complaint, but the Standards Board refer the complaint back then the Assessment Sub Committee must take the assessment decision again

- (y) Referral back by the Monitoring Officer

If during an investigation the MO becomes aware of any other matter which is materially more serious or materially less serious than may have been apparent when the original initial assessment decision was made the MO may refer the matter to the Standards Committee. The Assessment Sub Committee will then convene to consider the additional information and will reconsider the initial assessment decision afresh

4. Referral to the to the Monitoring Officer for steps other than investigation

- (a) Upon receipt of a direction from the relevant Sub Committee for steps to be taken other than investigation (such as training for the member or conciliation) the MO shall deal with the matter in accordance with the direction.
- (b) The MO shall give notice to; the member, the complainant, the parish council (if the member is a parish council member) and the standards committee of any other relevant authority concerned.
- (c) Within a period of 3 months, or as soon as reasonably practicable thereafter, the MO will submit a written report to the relevant Sub Committee giving details of the action taken or proposed to be taken.
- (d) The MO will respond to any further directions made by the Sub Committee

5. Referral to the Monitoring Officer for investigation

- (a) Upon receipt of a referral from the relevant Sub Committee, the MO shall conduct an investigation of the allegation and report thereon to the Council's Standards Committee. The MO may nominate another person to carry out his/her functions where he/she himself/herself ought not to perform particular functions in respect of a referred matter. Such person may be an officer of the authority, an officer of another local authority (a

mutual co-operation protocol in this respect is to be entered into by the five Tees Valley Local Authorities), or an external investigator.

The MO and any person appointed by him/her to act in his/her place may appoint persons to assist him/her in the conduct of his/her functions.

(b) Notification to the Member

The MO will then, unless otherwise directed by the relevant Sub Committee that it is contrary to the public interest or would prejudice any persons ability to investigate the allegation shall, notify, in writing, the Member against whom the allegation is made.

(c) Notification of Complainant

The MO will notify the complainant that the matter has been referred to him/her for investigation.

(d) Legal Advice and Support for the Member

General advice and support will be made available on request from a legal officer from one of the other Tees Valley Authorities in accordance with the Protocol agreed between the Authorities – “Ethical Framework – Members’ Code of Conduct – Alleged Breaches”.

In addition to general advice and support, the Council has with effect from 29th November, 2005 taken out legal protection cover for Members with Zurich Insurance Company (Zurich). This does not cover alleged breaches of the Code of Conduct occurring before then. The policy encompasses cover for the cost of legal advice and representation throughout an investigation conducted by an Ethical Standards Officer or the Monitoring Officer following referral to him/her by the Standards Board for England. The policy extends to a hearing of the Standards Committee and in appropriate circumstances to an adjudication conducted by a Case Tribunal or Interim Case Tribunal. It also provides that Zurich will appeal against a decision of a Case Tribunal or Interim Case Tribunal to suspend, partially suspend or disqualify a Member.

A confidential legal advice helpline is available over the phone on a 24/7 basis, provided by DAS - on 0117 9342111.

There is a limit of indemnity of £50k.

IMPORTANT - The Member must repay any legal costs if he/she is found to be in breach of the Code of Conduct.

(e) Notification to the Parish Council Clerk

Where the allegation relates to the conduct of a member of a Parish Council in his/her capacity as such, at the same time as notifying the Councillor, the MO will notify the Clerk of the Parish Council concerned.

(f) Initial Response of the Member

In notifying the Member of receipt of the allegations, the MO will invite the Member to respond, in writing, within 21 days of notification as follows :-

- (i) advising the MO whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (ii) indicating whether any of the facts set out in the notification to the Member are disputed;
- (iii) providing the Member's reasons for disputing any such facts;
- (iv) providing the Member's reasons for arguing that there has not been a failure to comply with the Code of Conduct either (1) on the basis of the facts alleged to date or (2) on the basis of the facts put forward by the Member in response to the notification;
- (v) providing the name and address of any representative of the Member, together with an indication of whether the Member wishes further communications to be sent directly to himself or herself or whether such communications should be sent to any nominated representative;
- (vi) listing (and where reasonably practicable, providing copies of) any documents which the Member would wish the MO to take into account in any investigation of the allegation, where possible providing copies of these documents and informing the MO of where the original documents may be inspected; and
- (vii) providing the MO with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Member would wish the MO to interview in the course of any investigation of the allegation, and any information which the Member would wish the MO to seek from that person or

organisation.

6. Conduct of Investigation

(a) Purpose of the Investigation

The purpose of the MO's investigation is to enable him/her to prepare and present to the Standards Committee a report which will provide the Committee with sufficient information for the Committee to determine whether the Member has acted in a breach of the Code of Conduct and, where there has been a breach of the Code of Conduct, whether any action should be taken in respect of the Member or in consequence of the breach, and what any such action should be.

(b) Termination of the Investigation

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

(c) Additional Matters

If during an investigation the investigation, the MO becomes aware of any other matter which is materially more serious or materially less serious than may have been apparent when the initial assessment decision was made the MO may refer the matter to the Standards Committee. This could include evidence of further breaches or more serious allegations than were originally being investigated. The Assessment Sub Committee will then convene to consider the additional information and will reconsider the initial assessment decision afresh

(d) Evidential Matters

Following notification to the Member, the MO will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Member has provided the MO with the information requested in accordance with paragraphs 5(f) (vi) and (vii) above, the MO shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation is intended to delay the completion of the investigation rather than to contribute to the accuracy of the MO's final report. The MO may supplement or amend this list at any stage of

the investigation.

(e) Production of Documents, Information and Explanations

In the course of the investigation, the MO and any person authorised on his/her behalf may make such enquiries of any person, and request any person to provide any document, information or explanation, as he/she thinks necessary for the purposes of carrying out the investigation. The MO and any person authorised on his/her behalf may require any of the authorities concerned to afford him/her reasonable access to such documents in the possession of that authority as appear to him/her to be necessary for the purpose of conducting his investigation.

(f) Interviews

(i) Requesting Attendance

In the course of the investigation, the MO may request any person to attend and appear before him/her or otherwise provide advice for the purpose of paragraph 6(e), or obtain expert or other advice from any person who, in his/her opinion is particularly qualified to assist as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) Representation

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

(iii) Notes of Interview

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

(g) Costs

The MO may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his/her request, such reasonable fees or allowances as he/she considers to be appropriate subject to the availability of the necessary

funds and to any maxima set by the authority.

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

At any stage in the course of, but prior to the completion of, the investigation, the MO may, suspend his/her investigation and request, in writing, to the Ethical Standards Officer concerned that the matter be referred back to that ESO for him to undertake an investigation, setting out the reasons for making the request.

- (i) Where a matter is so referred to an ESO, the ESO must respond to the request within 21 days of its receipt and may :-
- (i) direct that the matter be referred to him for investigation in which case the MO shall cease his investigation; or
 - (ii) direct that the MO continue his investigation in which case the MO shall continue his investigation and may not make any further such request in respect of that matter.

7. Report

- (a) After the expiry of the 21 day period referred to in paragraph 5(f) and when the MO is satisfied that he/she has sufficient information to meet the requirement set out in paragraph 6(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report setting out :-
- (i) a 'confidential' marking;
 - (ii) a 'draft' marking;
 - (iii) the date;
 - (iv) the legislation under which the investigation is being carried out;
 - (v) a summary of the allegation;
 - (vi) the relevant sections of the Code of Conduct;
 - (vii) the Member's initial response to the notification of the allegation (if any);

- (viii) the relevant information and explanations which he/she has obtained in the course of the investigation;
 - (ix) a list of any documents relevant to the matter;
 - (x) a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
 - (xi) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
 - (xii) a statement of his/her draft findings of fact, the evidence in support of those facts and his/her reasoning; and
 - (xiii) his/her draft finding as to whether :-
 - he/she considers that there has been a failure to comply with the Council's Code of Conduct or the Code of Conduct of any other authority concerned ('a finding of failure'); or
 - he/she considers that there has not been a failure to comply with the Council's Code of Conduct or the code of conduct of any other authority ('a finding of no failure').
 - (xiv) The draft report should also state that the report does not necessarily represent his/her final finding and explain that he/she will present a final report to the Standards Committee once he/she has considered any comments received on the draft report;
 - (xv) Any recommendations which the MO is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. Where the allegation relates to a Parish Councillor, such recommendations would be recommendations which the MO would recommend that the Standards Committee make to the Parish Council.
- (b) The MO shall then send a copy of his/her draft report to the Member and the complainant and relevant parts of that report to any other person

who has been interviewed and request that they send any comments, orally or in writing, thereon to him/her within 14 days.

- (c) After the expiry of that period (or such reasonable extended period as the MO may allow), the MO shall reconsider his/her draft report in the light of any comments received and, shall produce a final report, which shall include those matters set out in paragraph 7(a). The report shall be marked 'final' and include documents relied on in reaching his/her conclusions.
- (d) The final report should state that it represents the MO's final findings and will be presented to the Standards Committee.
- (e) The final report will be sent to :-
 - (i) the Member who is the subject of the allegation;
 - (ii) the complainant;
- (f) Where the report concerns a finding of no breach of the Code of Conduct, the covering letter to the persons set out in (e) above, should explain that the report will be sent to the Standards Committee for consideration.
- (g) Where the report concerns a finding of breach of the Code of Conduct, the said covering letter should make it clear that there will be a hearing into the allegation.
- (h) 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.
- (i) Where the report concerns a finding of failure, the MO will refer the report to the Standards Committee for a hearing.
- (j) Where the report concerns a finding of no failure, the MO will refer the report to the Standards Committee, which will consider the report and make one of the following findings :-
 - (i) That it accepts the MO's finding of no failure ('a finding of acceptance'), or
 - (ii) That there is a case to answer and the matter should be considered at a hearing of the Standards Committee to make a final determination on whether the Code of Conduct was breached.

(k) As soon as reasonably practicable after making a finding of acceptance, the Standards Committee shall :-

(i) give written notice of that finding to :-

the Member who is the subject of the finding of no failure;

any ESO concerned;

the Standards Committee of any other authority concerned, if not the Standards Committee that made the finding;

any Parish Council concerned;

the complainant;

(ii) arrange for a notice to be published in at least one newspaper circulating in the area of the authority concerned, or, as the case maybe, in the area of each of the authorities concerned stating that the Standards Committee have found that there has not been a failure on the part of the Member to whom the finding of no failure relates to comply with the Code of Conduct of the authority concerned or, as the case may be, with the Code of Conduct of any other authority concerned and indicating the reasons for that finding. Arrange for such notice to be published on the authorities website.

(iii) not arrange for such a notice to be published if the Member concerned so requests.

8. Outline of Standards Committee Hearing Procedure

Where the report of the MO concerns a finding of failure or the Standards Committee, having considered a report that concludes there was no breach, decides there is a case to answer, the Standards Committee must hold a hearing in relation to an allegation within three months of the date of completion of the report prepared by the MO.

Following completion of his/her report, the MO must give a copy of that report to the Member whom the allegation has been made about.

Normally, a hearing will take place at least 14 days after the Member whom the allegation has been made about receives a copy of the MO's report. However, the hearing can be held less than 14 days after the Member

receives a copy of the MO's report if the Member agrees.

If the Member whom the allegation has been made about does not go to the hearing, the Standards Committee may consider the MO's 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 will 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 MO's report, the Committee will be failing in its legal duty and may face judicial review proceedings.

The Standards Committee may adjourn the hearing in certain circumstances, as set out below.

Members of the Standards Committee are obliged under paragraph 3(a) of the Council's Code of Conduct not to disclose information that they have received or that has been given to them in confidence.

9. **Scheduling a Hearing**

Except in complicated cases, the Standards Committee will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. The Committee will not normally schedule hearings in such a way as to result in late night hearings, as this is not ideal for effective decision-making.

(a) The Pre-Hearing Process

The Standards Committee will follow a pre-hearing process to deal with procedural issues only. This process is intended to :-

- (i) identify whether the Member whom the allegation has been made about disagrees with any of the findings of fact in the MO's report;
- (ii) decide whether or not those disagreements are significant to the hearing;
- (iii) decide whether or not to hear evidence about those disagreements during the hearing;
- (iv) decide whether or not there are any parts of the hearing that should be held in private; and

- (v) decide whether or not any parts of the MO's report or other documents should be withheld from the public.

The pre-hearing process will usually be carried out in writing, although occasionally a face-to-face meeting between the Chair, the people involved and their representatives may be necessary.

10. The Member's Response

The officer providing administrative support to the Standards Committee, in consultation with the Chair of the Committee, will write to the Member concerned to propose a date for the hearing, outline the hearing procedure and the Member's rights. They will also ask for a written response from the Member, within 14 days, to find out whether or not he or she :-

- disagrees with any of the findings of fact in the MO's report, including the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person, indicating the name and address of that representative, together with an indication of whether the Member wishes further communication to be sent directly to the Member or whether such communication should be sent to the nominated representative;
- 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 providing the names of those witnesses and a summary of the evidence they propose to give;
- wants any part of the hearing to be held in private;
- wants any part of the MO's report or other relevant documentation to be withheld from the public; and
- can come to the hearing, offering an opportunity for the Member to offer alternative dates (with reasons); and
- wants to indicate any factors which the Member would wish the Committee to take into account should the Committee feel that there has been a failure to comply with the Code of Conduct.

Forms to identify any findings of fact that he or she disagrees with (Form A attached), to outline any further evidence for the Standards Committee (Form

B attached), and to indicate any factors to be taken into account if the Member is found to have failed to follow the Code of Conduct (Form C attached) (or forms to similar effect), will be sent to the Member, who may opt to use the forms to help in his or her response. The Member will also be invited to complete Forms D and E attached if he or she chooses, to assist the process.

The Member will be asked to make clear all the disagreements with the findings of fact in the MO's report during this pre-hearing process. This will allow the Committee to decide what witnesses will be needed. Members will not be allowed to raise new disagreements over the findings of fact in the MO's report at the hearing unless there are good reasons for doing so, such as new evidence becoming available.

11. The MO's Response

The Standards Committee will invite the MO to comment on the Member's response within 10 clear working days, to indicate 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 MO's report or other relevant documents to be withheld from the public.

12. 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 allegation. However, the Committee cannot order witnesses to appear or give evidence.

13. The Pre-hearing Process Summary

After the expiry of the time periods or the completion of the steps set out above, the Monitoring Officer or an Officer acting on his behalf will review the documentation in consultation with the Chair of the Standards Committee and list the matter for hearing by the Committee. The Monitoring Officer or an Officer acting on his behalf, will then write to all interested parties at least 10 clear working days before the hearing with a case summary to 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, if involved;
- 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 MO's report that are agreed;
- the findings of fact in the MO's report that are not agreed;
- whether or not the Member or the MO 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.

14. Directions

(a) Either part may apply in writing to the Standards Committee to give directions as to any matter relating to the hearing of the case. If made prior to the list case summary, such applications will be determined by the Chair of the Standards Committee. If made after the case summary, such applications will be determined by the appointed Chair of the Standards Committee to hear the matter. Applications made under this provision may include :-

- a request for further particulars in connection with the notification or of the response by the Member or any matter stated therein;
- a request for a determination of any question as a preliminary issue;
- a request for an early hearing of the notification matter or of any question arising out of the notification matter;
- a request for extensions of time or for adjournments of the proposed hearing.

Unless an application for directions is accompanied by the written consent of all the parties, it will be served by the Legal Advisor to the

Standards Committee ('the Legal Advisor') on any other party who might be affected by such directions and that party will be given a reasonable opportunity for making representations which will be taken into account by the Chair of the Standards Committee before a decision is made on whether to make a direction.

- (b) The Chair of the Standards Committee may give directions requiring any party to provide such particulars, supplementary statements, or access to documents as may be reasonably required for the determination of the matter.
- (c) Where it appears to the Chair of the Standards Committee that any proceedings would be facilitated by holding a pre-hearing review, he may, on the application of a party or of his own motion, give directions for such a review to be held. The Chair will give the parties not less than 14 days notice, or such shorter notice as the parties agree, of the time and place of the pre-hearing review.
 - (i) The pre-hearing review will be in private unless the Chair of the Standards Committee otherwise directs and the parties may appear and may be represented by counsel or solicitor or by any other person.
 - (ii) On a pre-hearing review, the Chair of the Standards Committee will give all such directions as appear necessary or desirable for securing the just, expeditious and economical conduct of the matter. Including directions as to whether any or all of both parties proposed witnesses are required to attend the formal hearing in person or whether the production of written statements only will be acceptable; what, if any, facts can be agreed and what, if any facts are in dispute; the order of witnesses to be presented at the hearing; and any other matters regarding the proceedings which the parties may wish to obtain directions upon.
- (d) The Chair of the Standards Committee may alter the time and place of any hearing and will wherever practicable give the parties not less than 7 days notice of any such alteration. Any altered hearing date will not (unless the parties agree) be before the date previously notified.
- (e) Either of the parties to the proceedings may also apply, at any time, for an application to adjourn the proceedings for a specified period of time. This may be appropriate, for instance, where the Member or his/her representative or legal adviser needs more time for the preparation of the case. This will be particularly so where there has been a late change in representation, or a late production of evidence or proposed

witnesses by the other party.

15. Committee Agenda and Reports

(a) Committee Agenda and Report

At least 5 clear days before the day of the meeting of the Standards Committee (Panel), the Legal Advisor will send to each Member of the Committee, to the Member concerned to the Complainant, the ESO if involved, the Clerk of any relevant Parish Council and to the MO copies of the following documents, but may make the provision of any such copies conditional upon an appropriate undertaking of confidentiality until such time as the Legal Advisor makes the report available to the press and public or the Standards Committee agreed that the press and public shall not be excluded from that meeting :-

- (i) The agenda for the meeting of the Panel;
- (ii) A copy of the MO's report; and
- (iii) A copy of any written statement in response to the report which has been received from the Member.

At the same time, the Legal Advisor will write to the Member, and to the MO and advise them that, at the commencement of the meeting, the Committee will consider whether the press and public should be excluded from the meeting.

(b) Background Papers

The Legal Advisor will, upon request, provide or arrange for any member of the Standards Committee or the Member to have access to any background documents as have been identified or supplied by the MO at any reasonable time between the issue of the agenda and the time of the meeting.

(c) Confidentiality in Advance of the Meeting

- (1) Where the Legal Advisor considers that the MO's report and/or the Member's written statement in response is likely to disclose "exempt information", and in consequence that it is likely that the Committee will, during consideration of these papers, not be open to the public, he/she shall not provide copies of those papers to the press or public or permit inspection thereof by the press or

public in advance of the meeting.

- (2) Where the Legal Advisor considers that the MO's report and/or the Member's written statement in response is likely to disclose "exempt information" falling within Paragraphs 1,2,4,5,7,8,9 or 10 of Schedule 12A of the Local Government Act 1972, he/she shall not provide copies of those papers to, nor permit inspection thereof by, any Member of the Council other than the Members of the Standards Committee and the Member in advance of the meeting.

Further, 'exempt information' for this purpose shall include information falling within paragraph 3 of Schedule 12A to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.

16. The Hearing

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 findings of fact in the MO'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

good reason to exclude the public, in line with the relevant access to information and human rights legislation.

The Standards Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the MO to seek further information or undertake further investigation on any point specified by the Standards Committee; but the Standards Committee shall not adjourn the hearing on more than one occasion under the provisions of this paragraph.

On occasion, the 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.

The Standards Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ESO concerned that the matter be referred back to the ESO for him to undertake an investigation; and any such request must set out the Committee's reasons for making it.

Where a matter is so referred to an ESO the ESO must respond to the request within 21 days of its receipt and may -

- (a) direct that the matter be referred to him for investigation, in which case the Standards Committee shall cease its consideration of the matter; or
- (b) direct that the Standards Committee shall continue to deal with the matter in accordance with the approved procedures in which case the Standards Committee shall do so and shall not make any further request in respect of that matter.

Where an ESO gives such a direction the Standards Committee shall convene to continue its consideration of the matter within 3 months of the receipt of the ESO's direction.

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 10 working days 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 provided that any such restrictions imposed are proportionate to the nature of the breach and do not unduly restrict the Members' ability to perform his or her duties as a Member;
- suspend or partly suspend the Member for up to six months;
- 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 in a form specified by the Standards Committee, receives any training, or takes part in any conciliation specified by the Standards Committee. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee;
- require the Member to submit a written apology in a form specified by the Standards Committee;
- require the Member to undertake training as specified by the Standards Committee;
- require the Member to undertake conciliation as specified by the Standards Committee.

Penalties may start immediately or on a date within a period of six months after the imposition of the sanction as the Standards Committee specify in their direction.

The Standards Committee will also arrange to publish a summary of its findings, reasons for its findings and any penalty set in one or more newspapers that are independent of the Authority concerned and circulating in the area of that Authority and on the authorities web site. 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.

The detailed Hearing Procedure can be found at **Annex 2**

Initial Assessment Criteria

This criteria is designed to provide a framework to assist the Sub Committee in considering the initial assessment of a complaint. It is not exhaustive nor designed to deal with every possible scenario. The Sub Committee must also take into consideration, relevant legislation, Guidance issued by the Standards Board for England and any advice that they have received from the MO.

In considering the assessment of a complaint, the Sub Committee need to first be clear that:

- the complaint is against one or more named members of the Borough Council or a Parish Council within the Borough.
- the named member was in office at the time of the alleged conduct and that the Code of Conduct was in force at the time.
- The complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

If it is clear that the complaint fails one or more of the above tests then the complainant must be informed that no further action will be taken in respect of the complaint.

Membership of another authority - If the member is no longer a member of the authority but is a member of another authority and the complaint relates to that authority's Code of Conduct the Sub Committee could refer the complaint to that authority

Insufficient information – if the information provided by the complainant is insufficient information to make a decision about whether a complaint should be referred for investigation or other action the Sub Committee could decide 'The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, no further action will be taken about this complaint'

Ambiguities - if there is some minor ambiguity about the allegation, which needs clarifying before the local assessment can properly be decided, the Sub Committee could consider requesting clarification or additional information from the complainant.

Considering the public interest - if the complaint meets the above tests the Sub Committee still need to be satisfied that it is in the public interest for the matter to be investigated or subjected to other action. The Sub Committee need to bear in mind that a decision to investigate a complaint or take other action will cost both public money and officers and elected members time. There may be a number of reasons why an investigation or other action may not be in the public interest:

- If the complaint is too trivial to warrant further action
- If the complaint appears to be malicious, politically motivated or tit for tat
- If the complaint against the member has already been the subject of an investigation or subject to other action
- If the complaint against the member has already been the subject of an investigation or subject to other action by another regulatory authority
- If the complaint is about something that happened so long ago that there would be little benefit in talking action now

Referral for an investigation – if the allegation if substantiated is in the public interest to warrant public funds being spent on an investigation then the Sub Committee should refer the allegation to the MO with an instruction that an investigation is arranged.

Referral for other action – it may not always be in the interests of good governance for an investigation to be carried out when other action may be more appropriate. It may be that the member complained of has a poor understanding of the Code and appears to have made a genuine mistake that might be addressed by training. It may be that there has been a breakdown of relationships within the authority, perhaps with a pattern of tit for tat allegations and perhaps mediation or conciliation may be appropriate. The more deliberate and more serious an alleged breach is the less likely that it may be suitable for resolution by action other than an investigation. The Sub Committee ought also to consider the prospects for success of the proposed resolution. The Sub Committee will also need to appreciate that if a complaint is referred for action other than investigation and this is unsuccessful, the Guidance issued by the Standards Board for England states that the matter ought not then be referred back to the Sub Committee to be dealt with in another way. What is appropriate will depend on the circumstances and the Sub Committee must carefully consider the options open.

Referral to the Standards Board for England - in some cases there may be reasons why the complaint ought not be dealt with locally but ought instead be referred for the Standards Board to deal with it. These include:

- The case is so serious that it could not be handled locally (for instance, if the matter was proved the appropriate penalty would be beyond the Standards Committee powers)

- The matter is too complex or involves substantial evidence beyond that likely to be available to the Standards Committee
- The complaint raises unclarified legal issues of national importance on which a national ruling would be helpful
- So many members of the Standards Committee are conflicted out that they are unable to deal with the Complaint
- The status of the member would make it difficult for the Standards Committee to deal with the complaint (for instance a complaint against a group leader, a member of the Cabinet or the Standards Committee)
- The status of the complainant would make it difficult for the Standards Committee to deal with the complaint (for instance a group leader, a member of the Cabinet, member of the Standards Committee, the MO, chief executive or other senior officer)
- The MO or other officers are conflicted out and suitable alternative arrangements are unavailable
- The public may perceive that the authority has an interest in the outcome of the case

Hearing Procedure for the Standards Committee

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 (MO) who investigated the allegation, and includes 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 (MO), 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 and General Points of Procedure

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. The Chair will be an independent Member of the Committee.

Voting

8. Each Member of the Committee shall have one vote and all matters shall be decided by a simple majority of votes count. Abstentions shall not be permitted. The Chair shall have a second or casting vote in the event of an

equality of voting.

Procedure at the Hearing

9. The purpose of the hearing is to test the robustness of the report(s) of the investigation produced by the MO, by examining the reasoning contained within the report(s) and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Panel based on seeking information in order to identify potential flaws in the report(s) and to clarify issues.
10. Subject to this, the conduct of the hearing is largely at the discretion of the Committee but it must be based on fairness and as far as possible, create an informal atmosphere. Informality will be difficult to achieve if, for example, the hearing is tape-recorded and it is probably best to avoid that practice. The taking of shorthand transcription of the procedures may however be an appropriate alternative. The proceedings will, however, be inquisitorial rather than adversarial.
11. It is essential that no part of the proceedings takes place other than in the presence of all the Committee Members. The Member or his/her representative and the MO should never be alone with the Committee in the absence of the other.
12. If the Committee wish to vary the notified procedure because it is considered appropriate to do so, they should only do so after hearing the views of all the parties present and entitled to make representations.
13. Sufficient time must be allowed for each party to put its case. In exceptional cases the Committee may adjourn a hearing to a later date. If this happens, it is essential that no part of the subsequent proceedings takes place other than in the presence of at least a quorum drawn from the original Committee Members.
14. Under no circumstances can a hearing continue if the number of Committee Members drops below three at any stage during the hearing or if at least one independent Member and one parish representative (where a parish matter is being considered) are not present at any time. The only exception to this, in the case of independent Members, is where at least one independent Member would have been present for the duration of the Committee hearing but for the fact that he was prevented or restricted from participating in any business of the Council by virtue of the Council's Code of Conduct. In which event the requirement for at least one independent Member to be present shall not apply.

Attendance of the Member, Complainant and Others

15. The Member may arrange to be accompanied at the meeting at his/her own expense by a solicitor, counsel or friend. The Committee may also allow such other person to appear at the hearing as it considers will aid its determination of the matter. If the 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 Members to be represented by a person they choose, but may refuse permission if the representative is directly involved in the matter being determined.
16. 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.

Preliminary Procedural Issues

17. 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.
18. If the Member is not present at the start of the meeting, the Committee shall decide whether to adjourn to enable the Member to attend, or to proceed in the absence of the Member. Where the Committee proceeds in the absence of the Member, the procedure for the meeting shall be adapted as necessary, giving any representative of the Member who is present such rights as would otherwise be accorded to the Member.

Exclusion Of The Public And Press

19. At the meeting, the Committee will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.
20. The Committee must act in accordance with Article 6 of the Human Rights Act 1998 which gives a right to a fair and public hearing by an independent and impartial tribunal. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the "trial" in the interests of :-
 - (a) morals
 - (b) public order
 - (c) national security in a democratic society

- (d) where the interests of juveniles or the protection of the private life of the parties so require, or
- (e) in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Member or the Investigator can demonstrate over-riding reasons within one of these five headings for the press and public to be excluded.

21. Article 8 of the Human Rights Act 1998 provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Committee) with the exercise of this right except such as is:-

- (a) in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972); and
- (b) necessary in democratic society in the interests of:-
 - (i) national security;
 - (ii) public safety;
 - (iii) the economic well being of the country;
 - (iv) the prevention of crime or disorder;
 - (v) the protection of health and morals (which would include the protection of standards of conduct in public life); or
 - (vi) the protection of the rights and freedom of others.

There is a clear public interest in promoting the probity of public authorities and public confidence therein, so that the presumption of the public hearing set out in Article 6 would apply and come within the exception set out in paragraph (b)(v) above, unless either the Investigator or the Member demonstrates to the Committee's satisfaction that the public hearing is not necessary for that purpose and that the interest of protecting the privacy of the Member or of the Council should over-ride that public interest.

22. Where the Committee conclude that the interest of protecting the privacy of the Member or of the Council should over-ride the public interest in a public hearing, the Committee remains bound by the provisions of the Local Government Act 1972, as primary legislation, so that it may only exclude press and public from all or part of the meeting if it is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case, the Committee has a discretion under Section

100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public. The categories of exempt information are set out in Schedule 12A of the Local Government Act 1972 (as amended) (copy attached).

23. Where the Committee does not resolve to exclude the press and public from the meeting, the Committee will arrange for copies of the agenda and reports to me made available to the press and public and other Members of the Council, and to permit inspection of the background papers.

Members of the Standards Committee are obliged under paragraph 3(a) of the Council's Code of Conduct not to disclose information that they have received or that has been given to them in confidence.

Witnesses

24. Although the Member who the allegation has been made about is entitled to call any witnesses he or she wants, the Standards Committee may limit the number of witnesses if it believes the number called is unreasonable. 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 evidence that will assist the Standards Committee to reach its decision.

Evidence

25. The Standards Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned. The Member who the allegation has been made about 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 Member who the allegation has been made about 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 MO's report. If more evidence is needed or if people do not agree with certain findings of fact in the MO's report, the Standards Committee may need to hear from witnesses. The Standards Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the Member who the allegation has been made about or the MO or their representatives. The Standards Committee can ask that these questions be directed through the Chair.

Adjournment

26. The Standards Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the MO to seek further information or undertaken further investigation on any point specified by the Standards Committee; but the Standards Committee shall not adjourn the hearing on more than one occasion under the provisions of this paragraph.
27. The Standards Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ESO concerned that the matter be referred back to the ESO for him to undertake an investigation; and any such request must set out the Committee's reasons for making it.

Where a matter is so referred to an ESO, the ESO must respond to the request within 21 days of its receipt and may :-

- (a) direct that the matter be referred to him for investigation, in which case the Standards Committee shall cease its consideration of the matter; or
- (b) direct that the Standards Committee shall continue to deal with the matter in accordance with the approved procedures in which case the Standards Committee shall do so and shall not make any further request in respect of that matter.

Where an ESO gives such a direction, the Standards Committee shall convene to continue its consideration of the matter within 3 months of the receipt of the ESO's direction.

Order of Business

28. The order of business at the hearing should be notified in advance to the parties and shall be as set out in the note for the Chair attached at **Annex 3**.

Making Findings of Fact

29. 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.
30. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
31. 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.

32. 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.
33. 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.
34. 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.
35. 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.
36. The Committee will usually move to another room to consider the representations and evidence in private.
37. On their return, the Chair will announce the Committee's findings of fact.

Did the Member fail to follow the Code?

38. 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.

39. 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.
40. The Committee should then consider any verbal or written representations from the Investigator.
41. The Committee may, at any time, question anyone involved on any point they raise in their representations.
42. The Member should be invited to make any final relevant points.
43. The Committee will then move to another room to consider the representations.
44. 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.

The Finding of the Standards Committee

45. Following its hearing, the Standards Committee can make one of the following findings:-
 - (a) The Member has not failed to follow the authority's Code of Conduct;
 - (b) The Member has failed to allow the authority's Code of Conduct; but no action needs to be taken; or
 - (c) The Member has failed to follow the authority's Code of Conduct and a sanction should be imposed.

If the Member has not Failed to Follow the Code of Conduct

46. 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

47. 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.
- 48. 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.
- 49. The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.

Penalties

- 50. 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:-
 - (a) 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;
 - (b) restrict the Member's access to the resources of the relevant authority for up to Six months, which could limit his or her access to the premises of the relevant authority provided that any such restrictions imposed are proportionate to the nature of the breach and do not unduly restrict the Members' ability to perform his or her duties as a Member;
 - (c) suspend or partly suspend the Member for up to six months;
 - (d) 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, in a form specified by the Standards Committee receives any training, or takes part in any conciliation specified by the Standards Committee. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee;
 - (e) require the Member to submit a written apology in a form specified by the Standards Committee;
 - (f) require the Member to undertake training as specified by the Standards Committee;
 - (g) require the Member to undertake conciliation as specified by the Standards Committee.
- 51. On their return, the Chair will announce the Committee's decision.

Recommendations to the Authority

52. 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.

Notice of Findings

53. The Legal Advisor will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.
54. Within two weeks of the end of the hearing the Legal Advisor will give written notice of the findings and circulate the full written decision, in the format recommended by the Standards Board, to the Member, the Complainant (where possible), the MO, the ESO concerned, the Standards Committee of the Borough Council and any other authority concerned.
55. At the same time the Legal Advisor shall arrange for a summary of the findings to be published in one or more independent newspapers circulating in the area of the Authority and on the Council's website.
56. Where the Standards Committee determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 54 shall
 - (a) state that the Committee found that the Member had not failed to comply with the code of conduct and shall give its reasons for reaching that finding; and
 - (b) not to be published in local newspapers if the Member so requests.
57. Where the Standards Committee determines that there has been a failure to comply with Code of Conduct but no action is required, the notice specified in paragraph 54 shall
 - (a) state that Committee found that the Member had failed to comply with code of conduct but that no action needs to be taken in respect of that failure;
 - (b) specify the details of the failure;
 - (c) give reasons for the decision reached; and

- (d) state that Member concerned may apply for permission to appeal against the determination.
58. Where the Standards Committee determine that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 54 shall :-
- (a) state that the Committee found that the Member had failed to comply with the Code of Conduct;
 - (b) specify the details of the failure;
 - (c) give reasons for the decision reached;
 - (d) specify the sanction imposed; and
 - (e) state that the Member concerned may apply for permission to appeal against the determination
59. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

Defamation

60. When conducting an investigation, the Monitoring Officer, Investigating Officer (or their delegates) have absolute privilege under the law of defamation, in terms of any oral or written statement made during the course of the investigation.

Confidentiality

61. No Member or Officer of the Council shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out in paragraph 62 below :
62. The circumstances referred to above are as follows :-
- (a) the disclosure is made for the purposes of enabling the Investigating Officer to conduct the investigation or otherwise to carry out his/her functions or the Standards Committee to carry out its functions in relation to the matter; or

- (b) the person to whom the information relates has consented to the disclosure; or
- (c) the disclosure is made in pursuance of a statutory requirement for disclosure; or
- (d) the information has previously been disclosed to the public with lawful authority; or
- (e) the disclosure is made to the Audit Commission for the purposes of any function of the Audit Commission under the Audit Commission Act 1998; or
- (f) the disclosure is for the purpose of criminal proceedings in the UK and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

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 any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals 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.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 7A Information which is subject to an obligation of confidentiality.
- 7B Information which relates in any way to matters concerning national security.
- 7C The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.
 1. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under :-
 - (a) the Companies Act 1985
 - (b) the Friendly Societies Act 1974
 - (c) the Friendly Societies Act 1992
 - (d) the Industrial and Provident Societies Acts 1965 to 1978

- (e) the Building Societies Act 1986 or
 - (f) the Charities Act 1993
2. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992
3. Information which :-
- (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,
- is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

NOTE FOR CHAIR OF STANDARDS COMMITTEE HEARING

1. General welcome to the Member and his/her representative, legal adviser or friend, the Complainant and his/her representative and the Investigating Officer; and brief explanation of the purpose of the proceedings.
2. Introduce Members of Committee – explain who is a Councillor, Independent Member and Parish Representative (if any).
3. Introduce the Legal Adviser to the Panel and the Proper Officer or his/her representative, briefly explaining their roles.
4. Ask the Member and his/her representative, legal adviser or friend and the Investigating Officer (IO) to introduce themselves.
5. Explain that no Member of the Panel has had any involvement in the matter the subject of the hearing to date.
6. Explain the Procedure:-
 - (a) Hearing inquisitorial , and informal but
 - (b) Will try and follow a structure to the hearing
 - (c) Proposed procedure:-
 - (i) Determination as to whether to exclude the press and public
 - (ii) Resolution of any procedural issues or dispute
 - (iii) Resolution of any disputes of fact:
 - (iv) IO presents report
 - (v) Member/Representative to ask questions (of IO) via the Chair
 - (vi) Committee to ask questions
 - (vii) Member/Representative presents their evidence (and witnesses)
 - (viii) IO asks questions (of Member /Witnesses) via Chair
 - (ix) Committee to ask questions
 - (x) Committee adjourns.
 - (xi) On return, Chair to announce Committee's findings of fact
 - (xii) Determination as to whether facts lead to conclusion that there has been a failure to comply with the Code of Conduct
 - (xiii) Member/Representative to make submissions (including witnesses)
 - (xiv) IO response (including witnesses)
 - (xv) Questions from Committee at any time to all parties
 - (xvi) Member/Representative may make closing submissions

- (xvii) Determination of any new issues of dispute and/or any new matters raised by the Member/Representative.
- (xviii) Committee adjourns.
- (xix) On return, Chair to announce Committee decision as to whether Member is considered to have breached Code and if so:-

IO submissions on what action Committee should take

Member/Representative submissions

- (xx) Committee adjourns
- (xxi) On return, Chair to announce Committee decision as to what action, if any, it considers should be taken and what, if any, other recommendations it considers it should make to the Member's authority.
- (xxii) Refer to Legal Adviser for information on notification of the decision and fact that decision is subject to right of appeal to an appeals tribunal drawn from the (national) Adjudication Panel

7. Parties to be exhorted to follow procedure described.
8. Decision to be made at (xix) and/or (xxi) on same day, but if either or both decisions are not to be made on the same day, will advise the parties when are expected to be made.
9. If informing Member/Representative verbally of the decision, reasons will be given for the decision.
10. Confirm that decision will also be notified to them in writing in the form of a notice of the Committee's findings (and report) and when; indicate whether or not the findings will be published and, if so, when.