

DARLINGTON BOROUGH COUNCIL

STANDARDS COMMITTEE

PROCEDURE FOR HANDLING COMPLAINTS AGAINST MEMBERS

Introduction

This document sets out the procedure which will be followed in the assessment, investigation and determination of allegations of breaches of the Code of Conduct by Members. It applies to complaints about the conduct of Councillors 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. It also applies to complaints about the conduct of Councillors 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 (set out in the Council's Constitution), 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 or the Subject Member.

With the exception of changes required by law or revised guidance, 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.

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 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 complaint 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 Consideration and Hearing Sub Committee. If the Sub 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 Consideration and Hearing Sub Committee will need to decide whether the Member has broken the Code of Conduct. If the Consideration and Hearing Sub Committee decide the Member has broken the Code it will hear representations from the investigator 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.

Current Law

This procedure has been drafted in compliance with the current law and guidance. The Legislation is the Local Government Act 2000, as amended by Part 10 of the Local Government and Public Involvement in Health Act 2007. The current regulations are the Standards Committee (England) Regulations 2008 SI No 1085. Guidance was been issued by the Standards Board for England in 2008 entitled 'Local Assessment of Complaints', 'How to Conduct an Investigation' and 'Standards Committee Determinations'. The Standards Board web site is www.standardsboard.gov.uk. Any subsequent changes in the law will take precedence over this procedure.

To help in highlighting when the regulations or guidance is being quoted, the print colour will be in **dark Red** for the regulations and **dark blue** for the Guidance.

A. Local Assessment and Review

1. Pre Assessment Steps

Receipt of Complaint

- 1.1 All complaints about the Conduct of Members will be sent to the Complaints Unit of Darlington Borough Council. The complaint will be entered into a database and then forwarded onto the MO. The Complainant will be written to and advised that the matter is being referred onto the MO.
- 1.2 On receipt of a complaint the MO should seek to identify if it relates to a complaint of misconduct by a relevant Member. The Guidance says that **'If the complaint is clearly not about member conduct, then the monitoring officer does not have to pass it onto the assessment sub committee'**. If the complaint is not clearly about a member's conduct, the MO should seek to determine the most appropriate way that it can be dealt with. This may involve seeking clarification of the issues with the Complaint. In cases where the allegation appears to be about something other than a Member Code of Conduct matter, it may also involve suggesting to the Complainant that alternative processes are more appropriate. For example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority or some form of alleged procedural or administrative irregularity, the MO will be able to identify a more appropriate procedure. However, if the complainant is unwilling to accept the MO's decision in this respect, the complainant should be asked to complete and return a copy of the formal complaint form (if not done already) identifying on what basis it is considered that the Member concerned is alleged to have breached the code of conduct. The MO then refer the complaint to the Assessment Sub-Committee to enable the Sub-Committee to consider whether or not there may have been a potential breach of the Code of Conduct and, if so, what if any action should be taken about the matter.
- 1.3 The MO should seek to identify if any information as is readily available that would assist the Assessment Sub-Committee in its function of assessing the complaint (e.g. minutes of meetings or extracts from the register of members' interests). The Guidance suggests that any **'pre-assessment enquiries should not be carried out in such a way as to amount to an investigation'**, and not extend to interviewing potential witnesses, the complainant or the subject member.
- 1.4 The MO need not refer a complaint to the Assessment Sub-Committee, which is in his/her opinion a repetition of a previous complaint from the same complainant with no significant new information and shall inform the complainant accordingly.
- 1.5 Where a complaint is made orally the Monitoring Officer shall explain to the complainant that only written complaints will be considered by the Assessment Sub-Committee and shall where appropriate provide assistance to the complainant in transcribing their complaint.

- 1.6 The Monitoring Officer will not normally refer a complaint made anonymously to the Assessment Sub-Committee but shall have discretion to do so where the complaint includes photographic or documentary evidence indicating a possible serious breach of the code.

Informal resolution

- 1.7 If the MO is of the opinion that there is the potential for local resolution, he/she may approach the Subject Member and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the Subject Member, the MO may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The MO will then refer the complaint to the Assessment Sub-Committee as required with details of attempts made to resolve the matter including the response of the Subject Member and of the complainant. The purpose of this is that where the Subject Member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Assessment Sub-Committee will be able to take that into account when considering whether the matter merits investigation or other further action.

Referral to The Assessment Sub Committee

- 1.8 Following receipt of a complaint, and where the complaint does appear to be a complaint of misconduct against a Subject Member, the MO will :-
- a. write to the complainant advising that the complaint will be assessed by the Assessment Sub-Committee at its next convenient meeting;
 - b. notify the Subject Member of receipt of the complaint, together with a written summary of the allegations, and state that the complaint will be assessed at the next convenient meeting of the Assessment Sub-Committee. However, if the MO is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the complaint, he/she will consult the Chairman of the Assessment Sub-Committee, and may then decide that no such advance notification shall be given;
 - c. collect such information as is readily available that would assist the Assessment Sub-Committee in its function of assessing the complaint (e.g. minutes of meetings or extracts from the register of members' interests);
 - d. seek local resolution of the matter where practicable, in accordance with paragraph 1.7 above;
 - e. write a report, including a copy of the complaint, relevant provisions of the Code of Conduct, such readily available information and details of attempts made to seek an informal resolution, on the agenda for the next convenient meeting of the Assessment Sub-Committee.
 - f. Arrange for the Assessment Sub Committee to meet to consider the complaint as soon as it can practicably be arranged, taking into account that the Guidance

states that 'the assessment sub committee should complete its initial assessment of an allegation within 20 working days.'

- 1.9 Where the complainant has requested that their identity be kept confidential, this request shall be brought to the attention of the Sub-Committee in the report. The Sub-Committee shall determine whether to agree to that request taking into account the following criteria :
- a. any claim by the complainant that they would be at risk of physical harm, adverse consequences in their employment, inappropriate pressure or other personal disadvantage if their identity were revealed;
 - b. the practicality of investigating the complaint without revealing the identity of the complainant;
 - c. any prejudicial impact on the Subject Member.

If the Sub-Committee intends not to agree to the request it should consider whether it would be appropriate to ask the complainant whether they would prefer to withdraw the complaint.

2 The Assessment Sub Committee

- 2.1 The Assessment Sub Committee will be comprised of 3 Members of the Standards Committee (**Regulation 7 states that a quorum of 3 members must be present for the duration**). The Chair of the Assessment Sub Committee must be an independent Member of the Standards Committee (**Regulation 6**). The Assessment Sub Committee must have at least one Borough Council Member (**Regulation 7**). If the Member Complained about is a Parish Councillor then the other Assessment Sub Committee Member must be a Parish Council Member (**Regulation 7**).
- 2.2 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 (**recommended in the Standards Board Guidance**).
- 2.3 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.
- 2.4 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.

- 2.5 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).
- 2.6 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.
- 2.7 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.

Referral to the MO for Steps other than investigation

- 2.8 The Assessment Sub Committee may decide to refer the complaint to the MO for steps other than investigation (such as training for the member or conciliation).
- 2.9 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 (Regulation 13).
- 2.10 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.
- 2.11 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.

Referral back by the Standards Board for England

- 2.12 If a complaint has been referred to the Standards Board by the Assessment Sub Committee 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 reconvene and take the assessment decision again.

Referral back by the Monitoring Officer

- 2.13 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 Assessment Sub Committee. The Assessment Sub Committee will then convene to consider the additional information and will reconsider the initial assessment decision afresh.

Review

- 3.1 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 legislation states that request for a review must be made in writing and submitted no later than 30 days after the date of the notice of the written decision of the Assessment Sub Committee.
- 3.2 When a written request for a review is received, the MO will:-
- a. write to the complainant acknowledging receipt of the review request and advise that the request for a review will be dealt with by the Review Sub-Committee at its next convenient meeting;
 - b. notify the Subject Member of receipt of a request for a review, together with a written summary of the review request, and state that the review will be dealt with by the Review Sub-Committee at its next convenient meeting. However, if the MO is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the complaint, he/she will consult the Chairman of the Review Sub-Committee, and may then decide that no such advance notification shall be given;
 - c. collect such information as is readily available that would assist the Review Sub-Committee in its function of assessing the complaint (e.g. minutes of meetings or extracts from the register of members' interests);
 - d. write a report, including a copy of the review request, relevant provisions of the Code of Conduct, such readily available information and details of attempts made to seek an informal resolution, on the agenda for the next convenient meeting of the Review Sub-Committee.
 - g. Arrange for the Review Sub Committee to meet to consider the complaint as soon as it can practicably be arranged, taking into account that the Guidance states that the Sub Committee should be 'aiming to complete the review within an average of 20 working days.' The legislation states that the referral to the review Sub Committee should be made within 3 months from the receipt of a request.
- 3.3 The Review Sub Committee will be comprised of 3 Members of the Standards Committee (Regulation 7 states that a quorum of 3 members must be present for the duration). The Chair of the Review Sub Committee must be an independent Member of the Standards Committee (Regulation 6). The Review Sub Committee must have at least one Borough Council Member (Regulation 7). If the Member Complained about is a Parish Councillor then the other Review Sub Committee Member must be a Parish Council Member (Regulation 7). A Member who has previously considered a complaint on the Assessment Sub Committee is not eligible to sit on the Review Sub Committee to reconsider that complaint (Regulation 7).
- 3.4 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, or as soon as is reasonably possible thereafter.

3.5 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.

3.6 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.

3.7 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).

3.8 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.

3.9 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.

Referral to the MO for Steps other than investigation

3.10 The Review Sub Committee may decide to refer the complaint to the MO for steps other than investigation (such as training for the member or conciliation).

3.11 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 (Regulation 13).

3.12 If the Review 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.

3.13 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.

Referral back by the Standards Board for England

- 3.14 If a complaint has been referred to the Standards Board by the Review Sub Committee 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 Review Sub Committee must reconvene and take the assessment decision again.

Referral back by the Monitoring Officer

- 3.15 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 Review Sub Committee. The Review Sub Committee will then convene to consider the additional information and will reconsider the initial assessment decision afresh.

B. Investigation of the Complaint

4. Introduction

- 4.1 This part of the procedure will be followed, in the local investigation of complaints of misconduct by Members. Either the Assessment Sub Committee or the Review Sub Committee may decide to refer the complaint to the MO for investigation. The Assessment Sub Committee or the Review Sub Committee may decide to refer the complaint to the Standards Board for investigation by an Ethical Standards Officer (“ESO”). At any point in an investigation the ESO may determine that the complaint should be referred to the authority’s MO to investigate. If the complaint is referred to the MO s/he is then required to arrange for the complaint to be investigated and to report the matter to the Consideration and Hearing Sub-Committee.
- 4.2 Where the Investigating Officer has found, after investigation, that the Member has not acted in breach of the authority’s Code of Conduct, the Consideration and Hearing Sub-Committee must meet to decide whether to accept that finding or to proceed to a formal hearing. Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct or where the Consideration and Hearing Sub-Committee decides to hold a full hearing, there will then be a formal determination hearing undertaken by a Consideration and Hearing Sub-Committee to determine whether a breach of the Code of Conduct has occurred and whether any action should be taken in consequence.
- 4.3 In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Consideration and Hearing Sub-Committee, to enable the Sub-Committee to come to an informed decision as to whether the Member has failed to comply with the Code of Conduct.

Appointment of Investigating Officer

- 4.4 Upon referral of a complaint by the relevant Sub-Committee or from an ESO, the MO shall make arrangements for an investigation of the complaint to be conducted and report thereon to the Consideration and Hearing Sub Committee. The MO may carry out the role of investigating officer personally, or can nominate another person to carry out this function. The investigating officer may be an employee of the Council, 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.
- 4.5 The Investigating Officer may appoint persons to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

Notification to the Member

- 4.6 The MO will, unless otherwise directed by the relevant Sub Committee, or Ethical Standards Officer that it is contrary to the public interest or would prejudice any persons ability to investigate the complaint (**Regulation 14**) shall notify the Subject Member, in writing:
- a. that the complaint has been referred for investigation;
 - b. the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
 - c. of the section(s) of the Code of Conduct which appear to be relevant to the complaint;
 - d. of the procedure which will be followed in respect of the complaint, and
 - e. of the identity of the Investigating Officer.
- 4.7 The MO shall provide the Member with a copy of any report received from the ESO.

Notification to the Parish Council Clerk

- 4.8 Where the complaint relates to the conduct of a member of a Parish Council in his/her capacity as such, at the same time as notifying the Subject Member, the MO will notify in writing the Clerk of the Parish Council (**Regulation 14**) concerned of the matters set out in paragraphs 4.6 a, c-e above.

Notification to the Person who made the Allegation

- 4.9 At the same time as notifying the Member, the MO will notify the person who made the allegation (**Regulation 14**).in writing of the matters set out in paragraphs 4.6 a, c-e above.

Notification to the Standards Committee of any other authority involved

- 4.10 At the same time as notifying the Member, the MO will notify the Standards Committee of any other authority involved (**Regulation 14**) in writing of the matters set out in paragraphs 4.6 a, c-e above.

Initial response of the Member

- 4.11 In notifying the Member of receipt of the allegation, the MO shall request the Member to respond to the Investigating Officer in writing within 14 days of notification as follows:
- a. advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;

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

Supporting information from the complainant

4.12 In notifying the complainant as above, the MO will request the complainant to respond to the Investigating Officer within 14 days

- a. listing any documents which the complainant would like the Investigating Officer to take into account in any investigation of the complaint, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- b. providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of an person or organisation whom the complainant would like the Investigating Officer to interview in the course of any investigation of the complaint, and
- c. providing the Investigating Officer with any information, that the complainant would like the Investigating Officer to seek from any person or organisation.

Legal Advice and Support for the Member

4.13 Legal 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 taken out legal protection cover for Borough Council Members with Zurich Insurance Company. 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.

5. Conduct of Investigation

Purpose of the Investigation

- 5.1 The purpose of the investigation is to enable the Consideration and Hearing Sub-Committee to be presented with a report which, together with any report provided by the ESO, with sufficient information for the Sub-Committee to determine whether the Member has broken 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 and what that action should be.

Additional Matters

- 5.2 Where, in the course of their investigation, the Investigating Officer becomes aware of any other matter which appears to them to indicate a breach of the Code of Conduct by the Member other than the breach which they are currently investigating, the Investigating Officer shall report the matter to the MO who will refer this to the Assessment Sub-Committee. The Assessment Sub Committee will then convene to consider the additional information and will reconsider the initial assessment decision afresh.
- 5.3 Following notification to the Member, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Member has provided the Investigating Officer with the information requested in accordance with Paragraphs 4.11 b and c above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless they are of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than to contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

Production of documents, information and explanations

- 5.4 In the course of the investigation, the Investigating Officer and any person authorised on their behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in their possession or control, or provide any explanation, as they think

necessary for the purposes of carrying out the investigation.

- 5.5 In the course of the investigation, the Investigating Officer and any person authorised on their behalf may require any authority of which the Member is a member to provide any document which is in its possession or control which they think necessary for the purposes of carrying out the investigation.

Interviews

5.6 (a) **Requesting attendance**

In the course of the investigation the Investigating Officer may request, or where possible require, any person to attend and appear before them or otherwise provide any information, document or explanation for the purpose of carrying out the investigation.

(b) **Representation**

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

(c) **Notes of interviews**

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

Costs

- 5.8 The Investigating Officer may, where they consider 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 their request, such fees or allowances as they consider to be appropriate subject to the maximum set by the authority.

Reference back to the Assessment Sub-Committee or Review Sub-Committee, in accordance with Regulation 14

- 5.9 At any point in the course of the investigation, if the Investigating Officer is of the opinion that:
- a. the seriousness of the matter which they are investigating is materially more or less serious than may have been apparent to the Assessment Sub-Committee when it made its decision (or the Review Sub-Committee when it carried out its review) and the relevant sub-committee would have made a different decision had it been aware of the new information or evidence; or
 - b. the Member has died, is seriously ill or has resigned from the Borough or

Parish Council and it is no longer appropriate to continue with an investigation,

they should consult with the MO.

5.10 If the MO is of the same opinion s/he shall then refer the complaint to the Assessment Sub-Committee. In forming this opinion the MO may take into account:

- a. the failure of any person to co-operate with the investigation;
- b. any allegation that the Member has been involved in a further breach of the Code
- c. an allegation that another member has been engaged in a related breach of the Code.

5.11 The Sub-Committee shall assess the complaint again in accordance with the Procedure for Assessment of Complaints.

6. The Draft Report

6.1 When the Investigating Officer is satisfied that they have sufficient information to meet the requirement set out in Paragraph 5.1, or has obtained as much information as is likely to be reasonably capable of being obtained, they shall prepare a draft report setting out:

- a. the details of the allegation;
- b. the relevant provisions of the Code of Conduct
- c. the Member's initial response to notification of the allegation (if any);
- d. the relevant information, advice and explanations which they have obtained in the course of the investigation;
- e. a list of any documents relevant to the matter;
- f. a list of those persons whom they have interviewed and those organisations from whom they have sought information;
- g. 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;
- h. a statement of their draft findings of fact;
- i. their conclusion as to whether the Member has or has not failed to comply with the Code of Conduct, and

- j. any recommendations which the Investigating Officer is minded to make to the authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.
- 6.2 The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the investigating Officer will present a final report to the Consideration and Hearing Sub-Committee once they have considered any comments received on the draft report.
- 6.3 The Investigating Officer shall then send a copy of the draft report in confidence to the Member and the complainant, and request that they send any comments about the draft report within 14 days.
- 6.4 The Investigating Officer may send a copy of, or relevant extracts from the draft report in confidence to any person on whose evidence they have relied on in compiling the draft report, and request that they send any comments about the draft report within 14 days.
- 6.5 After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall take into account any comments received and reconsider the draft report making any amendments or corrections to the draft report that are necessary.

7 The Final Report

- 7.1 A copy of the final report should be sent to the MO. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Consideration and Hearing Sub-Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching their conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses.
- 7.2 The MO shall then send a copy of the final report to the Member, advising that the final report will be referred to the Consideration and Hearing Sub-Committee to decide:
- a. in cases where the final report concludes that there has not been a failure to comply with the Code of Conduct, whether that finding is accepted by the Committee, and
 - b. in cases where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct, whether the complaint should proceed to a full hearing of the Consideration and Hearing Sub-Committee or will be referred to the Standards Board Adjudication panel for a formal

hearing (although this option is only available if the Standards Committee determines that the action it could take against the Member would be insufficient were a finding of failure to comply with the code to be made and the president or deputy president of the Adjudication Panel has agreed to accept the referral);

- 7.3 The MO shall ensure that, when the agenda for the Consideration and Hearing Sub-Committee is sent out, including the final report, the agenda and the report are also sent to the complainant together with a note explaining the circumstances under which a hearing into the allegations may be conducted, and the procedure for these events.
- 7.4 In accordance with **Regulation 17(1)**, the Consideration and Hearing Sub-Committee considers the report it shall make one of the following findings:
- a. That it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct as set out in the complaint;
 - b. That the matter should be considered at a full hearing of the Consideration and Hearing Sub-Committee, conducted in accordance with the authority's procedure for Local Determination Hearings;
 - c. That the matter should be referred to the Standards Board for England Adjudication Panel.
- 7.5 In accordance with **Regulation 17(2)** the Consideration and Hearing Sub-Committee may only make a finding under 7.4c if it has determined that the action that it could take against the Member would be insufficient if a breach was found and the President or Deputy President has agreed to accept the referral.
- 7.6 Following a finding of the Consideration and Hearing Sub-Committee as set out in paragraph 7.4 above, the MO shall, as soon as reasonably practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to;
- a. The Member;
 - b. Any Ethical Standards Officer involved;
 - c. The Standards Committee of any other local authority of which the Member is also a member
 - d. The person who made the allegation;
 - e. The Complainant.

and in the case of a finding under 7.4a shall ask the Member whether they object to the publication of a notice of the finding in at least one local newspaper and on the Council's website, and arrange for the publication of such a notice unless the Member so objects.

C. Hearing the Complaint

Introduction

- 8.1 The main purpose of a determination hearing is to decide whether a Member has breached the Code of Conduct and, if so, to decide if a sanction should be applied and what form the sanction should take.
- 8.2 This procedure applies to Complaints referred for a full hearing by the Consideration and Hearing Sub-Committee and also to referrals from an ESO of the Standards Board for England.
- 8.3 The Consideration and Hearing Sub-Committee will be comprised of 3 Members of the Standards Committee (**Regulation 7 states that a quorum of 3 members must be present for the duration**). The Chair of the Consideration and Hearing Sub-Committee must be an independent Member of the Standards Committee (**Regulation 6**). The Consideration and Hearing Sub-Committee must have at least one Borough Council Member (**Regulation 7**). If the Member Complained about is a Parish Councillor then the other Assessment Sub Committee Member must be a Parish Council Member (**Regulation 7**).

The Pre-Hearing Procedure

- 8.4 The pre-hearing procedure is designed to identify any disputes of fact between the member and the Investigating Officer or the Standards Board in respect of matters in the investigation report, and to identify any witnesses and evidence to be presented, so that the necessary documents and witnesses can be organised to ensure that there are no surprises at the hearing and that the Consideration and Hearing Sub-Committee has everything which it needs in order to determine the complaint.
- 8.5 The Guidance recommends that **the pre-hearing process should 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.

Setting the hearing date

- 8.6 If the Consideration and Hearing Sub-Committee on consideration of a final report finds that a complaint should proceed to a full hearing, in accordance with the Regulations (**Regulation 18**) the Consideration and Hearing Sub-Committee must hold a determination hearing in relation to a complaint within three months of the date of completion of the final report by the investigating officer, or in the case of a referral from an ESO three months from the date the referral was received by the MO. If the hearing is not held within 3 months it must be **'held as soon as reasonably practicable thereafter'**.
- 8.7 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 final report. However, the hearing can be held less than 14 days after the Member receives a copy of the

final report if the Member agrees (**Regulation 18**).

- 8.8 The officer providing administrative support to the Standards Committee, in consultation with the Chair of the Consideration and Hearing Sub-Committee, will write to the Subject Member concerned to propose a date, time and place for the hearing, outline the hearing procedure, enclosing a copy of this procedure and also to seek the members response to the issues raised in 8.11(below).
- 8.9 Any objection to the proposed hearing date must be notified in writing to the MO forthwith. The MO will act reasonably in considering any requests for an alternative hearing date but is not obliged to reschedule the hearing, having particular regard to the requirement to convene a hearing within three months. The MO will consult with the Chair before re-scheduling the meeting.
- 8.10 The Guidance recommends that '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'. Hearings will not normally be schedule hearings in such a way as to result in late night hearings, as this is not ideal for effective decision-making.

The Member's Response

- 8.11 The officer providing administrative support to the Standards Committee will ask the Member for a written response within 14 days in respect of the findings in the report and other issues relevant to the Hearing, to find out whether or not s/he:
- a. Disagrees with any of the findings of fact in the Investigator's report, including the reasons for any disagreements;
 - b. Agrees s/he has breached the Code of Conduct and, if not, why;
 - c. Has given, or would be willing to give an apology and/or undergo any training or conciliation;
 - d. Has anything s/he would like to be taken into account by the Committee when it considers whether a sanction should be imposed if a breach is found;
 - e. can attend the hearing, offering an opportunity for the Member to offer alternative dates (with reasons);
 - f. Wants to be represented at the hearing by a solicitor, barrister or any other person;
 - g. Wants to give evidence to the Sub-Committee either verbally or in writing (if he or she intends to submit only written representations the Member will be asked to attach the written representations) briefly stating the relevance of those witnesses they wish to call;
 - h. Wants to call relevant witnesses to give evidence to the Sub-Committee, and, if so, to provide the name and contact details for those witnesses and a brief outline of the evidence each witness will give;
 - i. Wants to produce any documents in support of his/her case and if so to provide them with the response form;
 - j. Wants any part of the hearing to be held in private and, if so, the reasons for the request. Meetings will normally be held in public but the Sub-Committee will consider the Member's request to hold it in private;
 - k. Wants any part of the Investigator's report or any other relevant documents

- to be withheld from the public;
- l. Has any comments or questions on the procedure to be followed; and
 - m. Has (or any witnesses or representative has) any special access requirements or other special requirements e.g. interpreter, special print or a hearing loop.
- 8.12 The Member will be asked to make clear all the findings of fact in the Investigator's report with which s/he disagrees during this pre-hearing process. This will allow the Sub-Committee to decide what witnesses will be needed. The Guidance suggests that [new disagreements over factual matters in the investigation report should only be allowed to be raised at the hearing in exceptional circumstances](#). This could be for instance new evidence becoming available which is relevant to the matter.
- 8.13 The model forms available from the Standards Board website may be used in this process to help the Member respond to the Consideration and Hearing Sub-Committee, including forms to identify any findings of fact that s/he disagrees with and to outline any further evidence for the Sub-Committee.
- 8.14 The officer providing administrative support to the Standards Committee will invite the Investigating Officer to comment on the Member's response, within 10 days, to say whether or not s/he:
- a. Wants to be represented at the hearing;
 - b. Wants to call relevant witnesses to give evidence to the Consideration and Hearing Sub-Committee and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give if different to the summary of their evidence in the Investigator's report;
 - c. Wants any part of the hearing to be held in private;
 - d. Wants any part of the Investigator's report or other relevant documents to be withheld from the public.
 - e. Will be asking the Consideration and Hearing Sub-Committee to consider any documentary or other written evidence (other than the report of the investigation) and, if so, to provide copies.
 - f. Thinks the hearing should be held in private and, if so, the reasons why.
 - g. Wants any documents withheld from the public and, if so, why.

Other Witnesses

- 8.15 The Consideration and Hearing Sub-Committee may also arrange for any other witnesses to be present if it feels they may help in determining the case, including the person who made the original allegation. However, the Sub-Committee cannot order witnesses to appear or give evidence

The Pre-hearing Summary

- 8.16 When the Consideration and Hearings Sub-Committee has received a response

from the member concerned and the Investigating Officer or the time for receiving these responses has expired, the Chairman of the Sub-Committee, in consultation with the members, will write to everyone involved **at least two weeks** before the hearing with a Pre Hearing Summary:

- a. Confirming the date, time and place for the hearing
- b. Enclosing a report from the MO which:
 - Summarises the allegation;
 - Outlines the main facts of the case that are agreed;
 - Outlines the main facts which are not agreed;
 - Gives an explanation of those parts of the Code of Conduct which are alleged to have been breached
 - States whether the Member has acknowledged the breach
 - States whether the Member has agreed to give an apology and/or to undergo any training or conciliation
 - Notes whether the member concerned or the Investigating officer will go to or be represented at the hearing;
 - Lists those witnesses, if any, who will be asked to give evidence; and
- c. Outlining the proposed procedure for the hearing.
- d. Enclosing the Investigating officers report and any documents which the member or the Investigating officer has indicated they wish to rely on.

8.17 The model forms available from the Standards Board website, currently Form F – Pre-Hearing Summary Document may be used in this process.

Disputes on the Pre-Hearing Summary

8.18 If having received the Pre-Hearing Summary the Member disagrees with any part of it he or she shall forthwith give notice of the disputed issues to the MO. The Member should then seek to resolve the disputed issues with the MO prior to the Hearing. Any unresolved issues will be dealt with as a preliminary matter at the hearing.

8.19 Failure to notify the MO of any issues of dispute or any failure to attempt to resolve those issues with the MO prior to the Hearing may mean that the Consideration and Hearings Sub-Committee may decline to listen to the Member's views on the disputed issues at the Hearing.

Committee Agenda and Reports

8.20 At least 5 clear days before the day of the meeting of the Consideration and Hearings Sub-Committee, the officer providing administrative support to the Standards Committee will send to each Member of the Sub Committee, the Subject Member concerned, the ESO if involved, the Clerk of any relevant Parish Council and to the MO copies of the following documents:-

- a. The Agenda of the Consideration and Hearings Sub-Committee

- b. A copy of the Investigating Officers Report
- c. A copy of the Members response to the report and any supporting documentation provided.
- d. A copy of the Investigating Officers comments on the Members response to the report.
- e. The Pre Hearing Summary

Confidentiality in Advance of the Hearing

8.21 Where the MO considers that the investigating officers report and/or the Member's written statement in response is likely to disclose "exempt information" falling within 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 hearing.

Summary of the Hearing process

8.22 While the hearing is not a court of law, it is a formal meeting of the Authority. The Guidance say that **all concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome for the Subject Member, the Council and the public.**

8.23 The Subject Member has the right to :

- a. attend the hearing and present his or her case;
- b. call a reasonable number of witnesses to give relevant evidence to the Consideration and Hearings Sub-Committee; and
- c. 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.
- d. Choose not to attend the hearing or be represented.

8.24 If the Subject Member does not go to the hearing, the Consideration and Hearing Sub-Committee may consider the complaint in the Member's absence. If the Consideration and Hearing Sub-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 (**Regulation 18**).

8.25 The hearing will be held in public and the relevant papers will be available for public inspection unless the Consideration and Hearing Sub-Committee is persuaded that there is good reason to exclude the public, in line with the relevant

access to information and human rights legislation.

- 8.26 The Consideration and Hearing Sub-Committee controls the procedure and the evidence presented at the hearing, including the number of witnesses and the way witnesses are questioned.
- 8.27 The Consideration and Hearing Sub-Committee will make findings of fact on the balance of probabilities.
- 8.28 The Consideration and Hearing Sub-Committee may adjourn at any time during the hearing in order to seek legal advice. The legal advisor to the Sub Committee will ordinarily be the MO.
- 8.29 The Consideration and Hearing Sub-Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Investigation Officer to seek further information or undertake further investigation; but the Consideration and Hearing Sub-Committee shall not adjourn the hearing on more than one occasion under the provisions of this paragraph.
- 8.30 After considering the written and verbal presentations, the Consideration and Hearing Sub-Committee must reach 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.
- 8.31 The Consideration and Hearing Sub-Committee will announce its decision at the hearing. The Guidance suggests it is also [good practice to make a short written decision available on the day of the hearing](#). The Sub Committee will give the Member concerned its full written decision within 2 weeks of the end of the hearing.
- 8.32 The Consideration and Hearing Sub-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 Consideration and Hearing Sub-Committee finds that the Member has not broken the Code, the Member can ask the Sub-Committee not to have this information published.
- 8.33 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.

Considering the Sanction

- 8.34 If the Consideration and Hearing Sub-Committee decides that the Member has failed to follow the Code of Conduct and 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.

8.35 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 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.

The Guidance suggests that 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 Guidance suggests that 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 fit for fit 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 Consideration and Hearing Sub-Committee

Modification of Procedure

1. The Consideration and Hearing Sub-Committee may agree to vary this part of this procedure in any particular instance where they are of the opinion that such a variation would assist in the determination of the issues or is necessary in the interests of fairness. If the Sub Committee wish to vary they should only do so after hearing the views of all the parties present and entitled to make representations.

Representation

2. The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Consideration and Hearing Sub-Committee, another person.

Legal Advice

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

Setting the Scene and General Points of Procedure

4. After all the Members and everyone involved have been formally introduced, the Chair should explain how the Consideration and Hearing Sub-Committee is going to run the hearing. The Chair will be an independent Member of the Standards Committee.

Voting

5. Each Member of the Sub 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

6. The purpose of the hearing is to test the robustness of the investigating officers report and the response of the Member to it by examining the reasoning contained within the report and the quality of all of the evidence presented. This calls for an inquisitorial approach by the Panel based on seeking information in order to identify potential flaws in the report and other evidence presented to it.

7. Subject to this, the conduct of the hearing is largely at the discretion of the Sub-Committee but it must be based on fairness and as far as possible, create an informal atmosphere. The proceedings will, however, be inquisitorial rather than adversarial.
8. It is essential that no part of the proceedings takes place other than in the presence of all the Consideration and Hearing Sub-Committee Members. The Subject Member or his/her representative and the investigating officer should never be alone with the Sub Committee in the absence of the other.
9. Sufficient time must be allowed for each party to put its case. In exceptional cases the Sub 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 Sub Committee Members.
10. Under no circumstances can a hearing continue if the number of Sub-Committee Members drops below three at any stage during the hearing.

Attendance of the Member, Complainant and Others

11. The Member may arrange to be accompanied at the meeting at his/her own expense by a solicitor, counsel or friend. The Sub 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 Sub Committee in advance. The Sub Committee should normally give permission for the Member to be represented by a person they choose, but may refuse permission if the representative is directly involved in the matter being determined.
12. The Consideration and Hearing Sub-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

13. The Sub-Committee should seek to resolve any issues or disagreements about how the hearing should proceed, which have not been resolved during the pre-hearing process.
14. If the Member is not present at the start of the meeting, the Sub-Committee may decide whether to adjourn to enable the Member to attend, or to proceed in the absence of the Member. Before considering to proceed in the absence of the Member the Sub Committee should seek to ascertain whether there is any reasonable explanation for the non attendance of the Member. If there appears to a valid reason the Sub Committee ought to adjourn. Where the Sub 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

15. At the meeting, the Sub Committee will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting. The Chairman shall ask the member, the Investigating Officer and the Monitoring Officer whether they wish to ask the Sub-Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Sub-Committee shall then determine whether to exclude the press and public from all or any part of the hearing.
16. Where the Consideration and Hearing Sub-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 Sub 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 Sub 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).
17. Where the Sub Committee does not resolve to exclude the press and public from the meeting, the Sub 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 the Council's Code of Conduct not to disclose information that they have received or that has been given to them in confidence.

Witnesses

18. Although the Member who the allegation has been made about is entitled to call any witnesses he or she wants, the Consideration and Hearing Sub-Committee may limit the number of witnesses if it believes the number called is unreasonable. The Sub 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 Sub Committee to reach its decision.

Evidence

19. The Consideration and Hearing Sub-Committee controls the procedure and evidence presented at a hearing, including 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 Sub Committee and call witnesses to give evidence. In many cases, the Sub Committee may not need to consider any

evidence other than the Investigating Officers report. If more evidence is needed or if people do not agree with certain findings of fact in the report, the Sub Committee may need to hear from witnesses. The Sub Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the Subject Member or the Investigating Officer or their representatives. The Sub Committee can ask that these questions be directed through the Chair.

Adjournment

20. The Consideration and Hearing Sub-Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Investigating Officer to seek further information or undertaken further investigation on any point specified by the Sub Committee; but the Sub Committee shall not adjourn the hearing on more than one occasion under the provisions of this paragraph.

Order of Business

21. 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

22. After dealing with any preliminary issues, the Consideration and Hearing Sub-Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
23. If there is no disagreement about the facts, the Sub Committee can move on to the next stage of the hearing.
24. If there is a disagreement, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Sub Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
25. The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Sub Committee's permission, to call any necessary witnesses to give evidence.
26. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Member.
27. If the Member disagrees with most of the facts, it may make sense for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.

28. If the Member disagrees with any relevant fact in the Investigating Officers report, without having given prior notice of the disagreement, then in accordance with the Guidance this will **only be allowed in exceptional circumstances**. This could include new evidence becoming available that the parties could not have produced before. If the Investigating officer is not present, the Sub 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 Sub 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.
29. The Consideration and Hearing Sub-Committee will usually move to another room to consider the representations and evidence in private.
30. On their return, the Chair will announce the Sub Committee's findings of fact.

Did the Member fail to follow the Code?

31. The Sub 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.
32. The Member should be invited to give relevant reasons why the Sub Committee should not decide that he or she has failed to follow the Code.
33. The Sub Committee should then consider any verbal or written representations from the Investigating Officer.
34. The Sub Committee may, at any time, question anyone involved on any point they raise in their representations.
35. The Member should be invited to make any final relevant points.
36. The Sub Committee will then move to another room to consider the representations.
37. On their return, the Chair will announce the Sub Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

The Finding of the Consideration and Hearing Sub-Committee

38. Following its hearing, the Sub 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

39. If the Sub Committee decides that the Member has not failed to follow the Code of Conduct, the Sub Committee can move on to consider whether it should make any recommendations to the authority.

If the Member has Failed to Follow the Code

40. If the Sub Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Member as to:-

- (a) whether or not the Sub Committee should set a penalty; and
- (b) what form any penalty should take.

41. The Sub Committee may question the Investigating Officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

42. The Sub 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

43. If the Consideration and Hearing Sub-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 Sub Committee receives any training, or takes part in any conciliation specified by the Sub 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 Sub Committee;
- (f) require the Member to undertake training as specified by the Sub Committee;
- (g) require the Member to undertake conciliation as specified by the Sub Committee.

44. On their return, the Chair will announce the Sub Committee's decision.

Recommendations to the Authority

45. After considering any verbal or written representations from the Investigator, the Consideration and Hearing Sub-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

46. The Legal Advisor to the Consideration and Hearing Sub-Committee 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.

47. 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 (if different), the ESO concerned, the Standards Committee of the Borough Council and any other authority concerned.

48. 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.

49. Where the Consideration and Hearing Sub-Committee determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 47 shall

- (a) state that the Sub 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.

50. Where the Sub Committee determines that there has been a failure to comply with Code of Conduct but no action is required, the notice specified in paragraph 47 shall
- (a) state that Sub 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.
51. Where the Sub 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 47 shall :-
- (a) state that the Sub 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
52. 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

53. When conducting an investigation, the 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

54. 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 55 below :
55. 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 CONSIDERATION AND HEARING SUB-COMMITTEE
DETERMINATION 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 Sub Committee – explain who is a Councillor, Independent Member and Parish Representative (if any).
3. Introduce the Legal Adviser to the Panel and the Administrative Support 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.