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## PROCEDURE RULES FOR LOCAL INVESTIGATION AND DETERMINATION OF CODE OF CONDUCT COMPLAINTS

### 1 SUMMARY

- 1.1 This report presents a procedure for dealing with the assessment, review and hearing of complaints that a Member may have breached the Code of Conduct.

### 2 INTRODUCTION

- 2.1 At its meeting on 17 July 2008, the Standards Committee agreed a procedure for dealing with Code of Conduct complaints.
- 2.2 Whilst the Procedure Rules for Local Investigation and Determination of Complaints was agreed in principle, the Committee determined that it would review the documentation at this meeting.

### 3 REQUIREMENTS AND PROPOSALS

- 3.1 A copy of the revised Procedure Rules including terms of reference and procedure rules for a Hearings Sub-Committee is appended to this report. Some amendments have been made in an effort to simplify the wording although the substance of the document remains the same.
- 3.2 Members are invited to consider and adopt the revised draft.

### 4 RESOURCE IMPLICATIONS

- 4.2 There are likely to be resource implications for the Council in that inevitably there will be an increased number of Sub-Committee meetings.

### 5 LEGAL IMPLICATIONS

- 5.1 The Standards Committee has a statutory duty to undertake local assessment and determination of complaints.

### 6 RECOMMENDATION

- 6.1 It is proposed that the Committee **RESOLVES** to adopt the Procedure Rules for Local Investigation and Determination of Complaints Concerning the Members' Code of Conduct as appended.

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**Background Papers:-**

None

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## Appendix 1

**PROCEDURE RULES FOR LOCAL INVESTIGATION AND DETERMINATION OF COMPLAINTS CONCERNING THE MEMBERS' CODE OF CONDUCT****Interpretation**

“Member” means the member of the Authority who is the subject of the allegation being investigated unless stated otherwise.

“Investigator” means the Monitoring Officer or person appointed by him to carry out an investigation under these procedure rules.

“ESO” means an Ethical Standards Officer of the Standards Board for England.

“Standards Committee” also refers to the “Assessment”, “Review” and/or “Hearings” Sub-Committees of the Standards Committee.

“Regulations” means The Standards Committee (England) Regulations 2008.

“Legal Advisor” means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another officer of the Authority, or someone appointed for this purpose from outside the Authority.

**Local Investigation of Complaint**

- 1 Any investigation into a complaint that a Member or co-opted Member has failed to comply with the Authority’s Code of Conduct will be the responsibility of the Monitoring Officer.
- 2 The Monitoring Officer shall have regard to any advice issued or direction given by the Standards Board for England.
- 3 The Monitoring Officer, unless directed otherwise by the Standards Committee or ESO, will inform:
  - a) the Member;
  - b) the person who made the allegation;
  - c) the Standards Committee of any other authority concerned; and
  - d) any Parish or Town Council involvedthat the matter has been referred for investigation.
- 4 Subject to paragraph 7 below, the Monitoring Officer must investigate any allegation referred by the Standards Committee and may appoint an Investigator for that purpose.
- 5 The Investigator will give any Member who is the subject of the investigation the opportunity to comment on the allegation made.

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- 6 The Investigator may do any or any combination of the following:
- a) make such inquiries of any person as the Investigator thinks necessary or expedient for the purpose of conducting that investigation;
  - b) require any person to give such information or explanation as the Investigator thinks necessary or expedient for the purposes of conducting that investigation;
  - c) require any of the authorities concerned to provide such advice and assistance as is reasonably necessary to assist in the investigation and
  - d) require any of the authorities concerned to afford reasonable access to such documents in the possession of that authority as appear to the Investigator to be necessary for the purpose of conducting the investigation.
- 7 In the case of an investigation referred for investigation under Section 60(2) or (3) of the Local Government Act 2000, the Monitoring Officer may at any stage prior to the completion of the investigation make a written request to the ESO that the matter be referred back to that ESO for investigation. Any such request should set out the reasons for making it.
- 8 At the conclusion of any investigation the Investigator, shall:
- (a) make one of the following findings –
    - (i) that s/he considers that there has been a failure to comply with the Code of Conduct of the Authority concerned, or as the case may be of any other Authority concerned (“a finding of failure”); or
    - (ii) that s/he considers that there has not been a failure to comply with the Code of Conduct of the Authority concerned, or as the case may be of any other Authority concerned (“a finding of no failure”);
  - (b) prepare a written report of the investigation with a statement concerning his/her findings;
  - (c) send a copy of that report to the Member who was subject of the investigation;
  - (d) refer that report to
    - (i) the Standards Committee of the authority; and
    - (ii) the Standards Committee of any other authority, except a Parish or Town Council, if the Member is also a Member of that authority and it so requests.

#### **Matters referred to Monitoring Officer after investigation**

- 9 Where a matter is referred to the Monitoring Officer under section 64(2) or (4) of the Local Government Act 2000 the Monitoring Officer shall –

- (a) send a copy of any report received from the ESO who has referred the matter, to any Member who is the subject of such a report; and, after that Member has received the report;
- (b) refer the report to the Standards Committee for consideration under the Regulations.

### References back from Monitoring Officer

- 10 (1) Where a matter is referred to the Monitoring Officer by the Standards Committee for investigation, subject to paragraph (4), the Monitoring Officer may refer that matter back to the Sub- Committee concerned if –
- (a) as a result of new evidence or information the Monitoring Officer is of the opinion that the matter –
    - (i) is materially more serious; or
    - (ii) materially less serious than may have seemed apparent to the Standards Committee when is made its decision and
    - (iii) that the Standards Committee would have made a different decision had it been aware of that new evidence or information; or
  - (b) the Member –
    - (i) has died; or
    - (ii) is seriously ill; or
    - (iii) has resigned from the authority concerned, and the Monitoring Officer is of the opinion that in the circumstances it is no longer appropriate to continue with an investigation.
- (2) If a matter is referred back to the Standards Committee, the Standards Committee shall make a decision as if the matter had been made to it under 57A(1) of the Local Government Act 2000.
- (3) In forming an opinion for the purposes of paragraph (1)(a), the Monitoring Officer may take account of –
- (a) the failure of any person to co-operate with an investigation; or
  - (b) an allegation that the Member has engaged in a further breach of the Code of Conduct of a relevant authority; or
  - (c) an allegation that another Member has engaged in a related breach of the Code of Conduct of a relevant authority.
- (4) Where the Standards Committee considers a matter referred back to it under this paragraph, it may direct that the matter should not be referred back a further time.

**Consideration of reports**

- 11 (1) The Investigator's report shall be considered by the sub-committee that referred the complaint for investigation. The sub-committee shall convene to consider the report and make one of the following findings –
- (a) that it accepts the Investigator's finding of no failure ("a finding of acceptance"); or
  - (b) that the matter should be considered at a hearing of the Standards Committee conducted under the Hearings Sub-Committee Procedure Rules; or
  - (c) that the matter should be referred to the Adjudication Panel for England for determination.
- (2) A Standards Committee may only make a finding under sub-paragraph (c) if –
- (a) it has determined that the action it could take against the Member would be insufficient were a finding of failure to be made; and
  - (b) the president or deputy president of the Adjudication Panel has agreed to accept the referral.
- 12 After a finding of no failure, the Standards Committee will give written notice of the finding to
- The Member;
  - The ESO concerned, if any;
  - The person who made the allegation that gave rise to the investigation;
  - Any Parish or Town Council concerned;
  - The Standards Committee of the authority concerned, if not the Standards Committee that made the finding.
- 13 Unless the Member requests otherwise, a notice will then be published in a local newspaper stating that there has not been a failure on the part of the Member 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.
- 14 The Adjudication Panel for England may appoint a tribunal to deal with references made under paragraph 11(c) above.
- 15 Where such a tribunal decides that a Member has failed to comply with the Code of Conduct of that authority, the Member may appeal to the High Court against the decision, or any other decision made by the tribunal.

**Hearings by Standards Committee (Sub-Committee)**

- 16 Where the Standards Committee convenes a hearing in relation to an allegation that the Member failed to comply with the Code of Conduct of the

authority such hearing must have regard to any relevant guidance issued by the Standards Board for England.

- 17 The hearing shall be convened and held within the timescales set in the Regulations and conducted in accordance with the Standards Committee Hearings Procedure set out in Appendix A to these rules.
- 18 The Standards Committee may, at any stage prior to the conclusion of the hearing, adjourn and require the Monitoring Officer to obtain further information or undertake further investigation on any point it specifies. The Standards Committee may not adjourn the hearing more than once under the provision of this paragraph.
- 19 Where a matter has been referred by an ESO, the Standards Committee may at any stage prior to the conclusion of the hearing adjourn and make a written request to the ESO that the matter be referred back to him to carry out an investigation. The request must set out the Committee's reasons for referral.
- 20 Within 21 days of receipt of a referral back the ESO will respond and either:
  - (a) direct that the matter be referred to him for investigation or
  - (b) direct that the Committee continues to deal with the matter and in which case will not be able to make further requests under paragraph 19 above on this matter.
- 21 The Standards Committee will reconvene to consider the matter within three months of the ESO's direction under paragraph 20 above, or as soon as practicable thereafter.

#### **Findings of the Standards Committee (or Hearings Sub-Committee)**

- 22 Following a hearing, the Standards Committee will make one of the following findings –
  - (a) that the member who was the subject of the hearing had not failed to comply with the Code of Conduct of any authority concerned;
  - (b) that the member who was the subject of the hearing had failed to comply with the Code of Conduct of an authority concerned but that no action needs to be taken in respect of the matters which were considered at the hearing; or
  - (c) that the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned and that a sanction should be imposed.

#### **Sanctions**

- 23 If the Standards Committee finds that the member failed to comply with the Code of Conduct but is no longer a member of any other authority in respect of which it exercises any function under Part 3 of the Local Government Act 2000, it shall censure that member.

- 24 If the Committee finds that the member failed to comply with the Code of Conduct and that a sanction should be imposed, it shall then impose any one of, or any combination of the following sanctions against that member –
- (i) censure;
  - (ii) restriction on access to the premises of the Authority and use of the resources of the Authority for a period up to a maximum of six months, provided that any such restrictions imposed are reasonable and proportionate to the nature of the breach and do not unduly restrict the member's ability to perform the functions of a member;
  - (iii) partial suspension for a period not exceeding six months;
  - (iv) suspension for a period not exceeding six months;
  - (v) a requirement that the member submits a written apology in a form specified by the Standards Committee;
  - (vi) a requirement that the member undertakes training as specified by the Standards Committee;
  - (vii) a requirement that the member participates in such conciliation as specified by the Standards Committee;
  - (viii) suspension or partial suspension for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the Standards Committee;
  - (ix) suspension or partial suspension for a period up to a maximum of six months or until such time as the member undertakes such training or conciliation as the Standards Committee may specify;
- 25 Any sanction imposed shall commence immediately following its imposition and service of notice as hereinafter provided by the Committee except that the Committee may direct that a sanction imposed under any sub-paragraphs (ii) to (ix) of paragraph 24 shall commence on such date, within a period of six months after the imposition of that sanction, as the Standards Committee may specify.

#### **Notification of Findings of Committee**

- 26 The Committee shall as soon as reasonably practicable after making a finding under paragraphs 22 and 23 –
- (a) give written notice and the reasons for it to –
    - (i) the Member;
    - (ii) the Standards Board for England
    - (iii) the Standards Committee of any other authority concerned;
    - (iv) any Parish or Town Council concerned; and
    - (v) the person who made the allegation that gave rise to the investigation.
  - (b) subject to paragraph 27, arrange for a summary of the notice to be published in at least one newspaper circulating in the area of every authority concerned, and if the Standards Committee considers it

appropriate, on the web page of any authority concerned and in any other publication.

- 27 Where the Standards Committee finds that the member who was the subject of the hearing had not failed to comply with the Code of Conduct of the authority concerned, and that the member concerned so requests, paragraph 26(b) shall not apply.
- 28 In a case where the member had failed to comply with the Code of Conduct but the Committee decided that no action needed to be taken, the written notice referred to in paragraph 26 above must specify details of the failure; give reasons for the Committee's findings, state that no action needs to be taken in respect of the failure; and state that the member may apply to the Adjudication Panel for England for permission to appeal against the finding.
- 29 In a case where the member failed to comply with the Code of Conduct and had imposed a sanction, the written notice referred to in paragraph 26 must specify details of the failure; give reasons for the Standards Committee's finding; specify the sanction imposed; and state that the member may apply to the Adjudication Panel for England for permission to appeal against the finding.

#### **Notices of Appeals**

- 30 Where the Standards Committee makes a finding that the member has failed to comply with the Code of Conduct of the Authority, that member may by way of written notice to the President of the Adjudication Panel for England seek permission to appeal and apply for the suspension of any sanction imposed until such time as any appeal is determined. The written notice must be received by the President of the Adjudication Panel within 21 days of the member's receipt of the written notice from the Standards Committee.

**Appendix A****HEARINGS SUB-COMMITTEE PROCEDURE**

The following procedures will apply when a Hearings Sub-Committee has been called to determine whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied.

**1 Interpretation**

- 'Member' means the member who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
- 'Investigator' means the Monitoring Officer or other investigating officer, and his or her nominated representative.
- "Committee" also refers to "a standards sub-committee".
- "Legal advisor" means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another officer of the authority who is legally qualified, or someone appointed for this purpose from outside the authority.

**2 The Pre-Hearing Process**

- 2.1 Prior to the hearing the Council's Monitoring Officer or his/her nominated representative will undertake a pre-hearing process to:
- a) identify whether the Member who the allegation has been made about disagrees with any of the findings of fact in the investigating officer's report;
  - b) decide whether or not those disagreements are significant to the hearing
  - c) decide whether or not to hear evidence about those disagreements during the hearing;
  - d) decide whether or not to recommend that the hearing or part of it should be held in private; and
  - e) decide whether or not to recommend that parts of the investigating officer's report or other documents should be withheld from the public.
- 2.2 The pre-hearing process will normally be carried out in writing, although occasionally a face-to-face meeting with the Chairman, the people involved and their representatives may be necessary.

**3 Representation**

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

- 3.2 The committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. Any legal advice will be taken by the committee in the presence all parties.

#### **4 Setting the scene**

- 4.1 After all the members and everyone involved have been formally introduced, the Chairman will explain how the hearing will be run.

#### **5 Preliminary procedural issues**

- 5.1 The committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process. In addition it will determine whether the hearing or any parts of it should be held in private, having regard to the Standards Board's advice on the admission of the press and public to Standards Committee hearings.

#### **6 Making findings of fact**

- 6.1 After dealing with any preliminary issues, the committee will then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
- 6.2 If there is no disagreement about the facts, the committee will move on to the next stage of the hearing.
- 6.3 If there is a disagreement, the investigator, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator or member complained against may call any necessary supporting witnesses to give evidence.
- 6.4 The committee will give all parties an opportunity to challenge any evidence put forward by any witness called by the investigator or member complained against.

#### **7 The Hearing**

- 7.1 The investigator will outline the case, up-date the Committee on the pre-hearing process and introduce his/her report.
- 7.2 The Committee will then consider the report of the investigator and any verbal representations from him/her and any witness called by him/her (if present).
- 7.3 The member will through the Chairman, be given the opportunity to ask questions of the investigator and any witness called by the investigator.
- 7.4 The Committee will then be able to ask questions of the investigator and any witness called by the investigator.

- 7.5 The member and any witness called by the member will, through the Chairman, be given the opportunity to make representations to the Committee. He/she will also be invited to give relevant reasons why the Committee should not decide that he/she has failed to follow the Code of Conduct.
- 7.6 The investigator, through the Chairman, will then be able to ask questions of the member and any witness called by the member.
- 7.7 The Committee is then able to ask questions of the member and any witness called by the member.
- 7.8 The investigator will be invited to make any final statement, but will not be permitted to introduce any new points.
- 7.9 The member will be invited to make any final statement, but will not be permitted to introduce any new points.
- 7.10 The committee will then retire to consider the representations and to decide whether or not the member has failed to follow the Code of Conduct.
- 7.11 If the Committee decides that the member has failed to follow the Code of Conduct, it will consider:
- (a) whether or not to set a penalty and what form any penalty should take; and
  - (b) whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.
- 7.12 On its return, the Chairman will announce the committee's decision. A full written decision will be issued as soon as possible after the hearing and in instances where a member was found to be in breach of the Code of Conduct the committee's decision will be published in a local newspaper.
- 7.13 In the event that the committee finds that member is not guilty of having breached the Code of Conduct he/she will be given the opportunity to decide whether he/she wishes a notice to that effect to be published in a local newspaper.

## **8 Composition of the Hearings Sub-Committee**

- 8.1 The Hearings Sub-Committee shall comprise four Members, including at least one elected Member of the Authority, one Parish Member and one Independent Member of the Standards Committee who shall chair the Sub-Committee,
- 8.2 Members of the Standards Committee will be divided into three groups, A, B and C, satisfying the composition requirements set out at paragraph 8.1. Each group will appoint an Independent Member as Chairman and will be called in

rotation to serve on the Hearings Sub-Committee when it is required to meet to undertake to determine whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied.

- 8.3 Where it is necessary, due to unavailability of Members, the Monitoring Officer in consultation with the Chairman of the Standards Committee may vary the rota or membership of the groups in order to ensure a quorate Hearings Sub-Committee is able to meet to determine the matter within a period of 3 months.

**9 Quorum**

- 9.1 The quorum for a meeting of the Sub-Committee shall be three Members including at least one Independent Member and if the complaint concerns a Parish Councillor, at least one Parish Member of the Standards Committee.