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## **MEMBERS CODE OF CONDUCT - COMPLAINTS PROCEDURE**

### **1 SUMMARY**

- 1.1 This report suggests 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 Since 8 May 2008 the Standards Committee has been responsible for dealing with the assessment, referral, investigation and hearing of complaints of misconduct against its District and Parish councillors.
- 2.2 In June 2008, the Standards Board for England issued guidance to aid authorities to develop effective procedures for this purpose. The guidance is statutory and must be taken into account when dealing with complaints.
- 2.3 A copy of the guidance, which is also available from the Standards Board website, has been sent under separate cover to each member of this committee and a copy has been placed in the Members' Library.

### **3 REQUIREMENTS AND PROPOSALS**

- 3.1 In accordance with the guidance, contact details for complaints have been published on the Council's website and will be publicised through the Council's own newspaper, Rochford District Matters, in due course.
- 3.2 It is proposed that Code of Conduct complaints are dealt with separately from other types of complaints received by the authority although the policy on Habitual and Vexatious Complainants may be applied equally to Code of Conduct complaints. With this in mind, a complaint form based on the model supplied by the Standards Board will be produced and made available electronically and for download on the Council's website. However, a complaint received in writing in any form will be accepted for assessment. A copy of the Standards Board model is attached for information at Appendix 1.
- 3.3 Members should note that the Monitoring Officer has the discretion to acknowledge receipt of a complaint and may inform the Member concerned that a complaint has been made against them. However, by law, only the Standards Committee has power to give a written summary of the allegations to the Member. This will only be provided once the complaint has been assessed.
- 3.4 The Monitoring Officer, or his nominee, will attend the assessment hearing and provide advice and assistance as required. Depending on the complexity of the issue, a written report from the Monitoring Officer may accompany the complaint.

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- 3.5 The guidance states that the Standards Committee must establish a sub-committee of no less than 3 members, chaired by an independent member, to assess complaints. It must also establish a similar sub-committee to deal with any request by a complainant for review of the initial assessment decision. These sub-committees are not required to have a fixed membership or fixed Chairmen and assessment and review are held in closed session with decisions given in writing within 5 working days.
- 3.6 It is suggested that three sub-committees are set up, an Assessment Sub-Committee, a Review Sub-Committee and a Hearings Sub-Committee with a rotating membership based on 3 teams each to include at least one Independent Chairman and one Parish member. This should allow all members of the Standards Committee to gain experience of each stage of the process.
- 3.7 Suggested terms of reference and procedure rules for an Assessment Sub-Committee and a Review Sub-Committee are set out at Appendix 2 and Appendix 3 respectively. Draft procedure rules for local investigation and determination of complaints, including terms of reference and procedure rules for a Hearings Sub-Committee are attached at Appendix 4.
- 3.8 It is also appropriate to consider a protocol for instructions to the Monitoring Officer. This is intended to aid the discharge of functions in relation to the initial assessment and review of allegations that a Member of the Authority has failed to comply with the Code of Conduct and provide the basis for mediation between parties in appropriate circumstances. A draft protocol is attached at Appendix 5.
- 3.9 Recruitment is underway for the two vacant Independent Members' posts. Their appointment must be approved by Full Council. Some information on applications received may be available by the date of the meeting. At the same time, a number of nominations have been received for the three Parish Member vacancies and these are being decided at a meeting of the Rochford Hundred Association of Local Councils on the same night as this Committee. In the meantime, it is proposed that appointments to the Sub-Committees continue to be delegated to the Monitoring Officer in consultation with the Chairman of the Standards Committee.
- 3.10 The Standard Board guidance states that a member of the Standards Committee involved in assessment or review can be a member of the committee that hears and determines the complaint. By use of a rota system, no member should be involved in more than one stage of the process. However, with only two Independent Members at present, it is possible that there may be a requirement for a Member to be involved in assessment or review and a hearing.
- 3.11 The current Local Determination Procedure Rules set out in Part 4 of the Council's Constitution are now redundant as a result of the above and should

be replaced by the terms of reference and Procedure Rules attached at Appendix 2, 3 and 4 if approved.

#### **4 RESOURCE IMPLICATIONS**

- 4.1 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**
- 6.2 To deal with complaints concerning Members' conduct separately from other complaints except in so far as the Habitual and Vexatious Complainants Policy will apply.
- 6.3 To set up an Assessment Sub-Committee, a Review Sub-Committee and a Hearings Sub-Committee with the terms of reference and procedure rules set out at Appendices 2, 3 and 4 of this report.
- 6.4 That the Committee **RECOMMENDS** to Council that the Local Determination Procedure Rules be revoked and replaced in Part 4 of the Constitution with the Procedure Rules adopted by the Standards Committee.

John Honey

Corporate Director (Internal Services)

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#### **Background Papers:-**

None

For further information please contact John Honey on:-

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If you would like this report in large print, braille or another language please contact 01702 546366.

## APPENDIX 1

# COMPLAINT FORM

## Your details

1. Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- the monitoring officer of the authority
- the parish or town clerk (if applicable)

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 6 of this form.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the standards committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other (       )

3. Equality monitoring questions

[Keep consistent with data collection elsewhere in your authority]

## 7 Making your complaint

[You may wish to include a preamble telling complainants the process that will be followed in considering their complaint. This may include factors such as:

- the timeframe and process for considering their complaint
- a synopsis of (or direction to) your authority's referral criteria
- explanation of the decisions the sub-committee can reach
- when and how they and others will be notified of the decision
- details of where to direct any queries]

4. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

5. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

**Only complete this next section if you are requesting that your identity is kept confidential**

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:

[Insert your authority's criteria for considering requests for withholding a complainant's details]

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The assessment sub-committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

**Additional Help**

7. Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the *Disability Discrimination Act 2000*, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

[You should insert relevant contact details here and expand on the support that your authority can offer to complainants with a disability that prevents them from making a written complaint, or where English is not their first language. You should set out clearly the support that is available and how to access it].

## APPENDIX 2

**ASSESSMENT SUB-COMMITTEE - TERMS OF REFERENCE AND PROCEDURE RULES**

The Assessment Sub-Committee is established to receive allegations that a Member of the District Council or a Parish Council in the District has failed, or may have failed, to comply with their Authority's Code of Conduct.

**1. Assessment of Complaint**

- 1.1 Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall satisfy itself that the complaint;
- Is a complaint against one or more named Member of an Authority covered by the Standards Committee
  - The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
  - The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.
- 1.2 The Sub-Committee will then make an initial assessment of the allegation based on the criteria set out at Appendix 1 and any other relevant information and shall then do one of the following:
- i. refer the allegation to the Monitoring Officer, with an instruction that s/he arrange a formal investigation of the allegation, or direct that s/he arranges training, conciliation or such appropriate alternative steps as permitted by Regulations;
  - ii. refer the allegation to the Standards Board for England;
  - iii. decide that no action should be taken in respect of the allegation; or
  - iv. where the allegation is in respect of a person who is no longer a Member of a relevant Authority, but is a Member of another authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the Member concerned of the nature of the allegation and that decision.

- 1.2 Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:
- i. it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;

- ii. the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
  - iii. the matter should be referred to the Adjudication Panel of the Standards Board for determination.
- 1.3 Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1.1 or 1.2 above, the Sub-Committee shall state its reasons for that decision.
- 2. Composition of the Assessment Sub-Committee**
- 2.1 The Assessment 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,
- 2.2 Members of the Standards Committee will be divided into three groups, A, B and C, satisfying the composition requirements set out at paragraph 2.1. Each group will appoint an Independent Member as Chairman and will be called in rotation to serve on the Assessment Sub-Committee when it is required to meet to consider one or more allegation received by the Authority that requires to be assessed.
- 2.3 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 Assessment Sub-Committee is able to meet to determine the assessment within 20 working days.
- 3. Quorum**
- 3.1 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.

## Appendix 1

### Assessment Criteria

The Assessment should consider the following in deciding whether to investigate or take other action:

1. Was sufficient information submitted by the complainant to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other action? If not, then the complainant should be told that unless or until further information is received, the Assessment Sub-Committee will take no further action.

2. Is the subject Member a Member of this authority? If not, if he or she is a Member of another authority then the matter should be referred to the Monitoring Officer of that authority.
3. Has the complaint been the subject of an investigation or other action relating to the Code of Conduct, or the subject of investigation by other regulatory authorities? If so, then there is nothing to be gained by further action being taken.
4. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
5. Is the complaint too trivial to warrant further action?
6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat? If so, does it still warrant investigation?

## APPENDIX 3

**REVIEW SUB-COMMITTEE - TERMS OF REFERENCE AND  
PROCEDURE RULES**

The Review Sub-Committee is established to review, upon the request of a person who has made an allegation that a Member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Assessment Sub-Committee that no action be taken in respect of that allegation.

**1. Assessment of Complaint**

- 1.1 Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Assessment Sub-Committee based on the criteria set out at Appendix 1 and any other relevant information and shall then do one of the following:
- i. refer the allegation to the Monitoring Officer, with an instruction that s/he arrange a formal investigation of the allegation, or direct that s/he arranges training, conciliation or such appropriate alternative steps as permitted by Regulations;
  - ii. refer the allegation to the Standards Board for England;
  - iii. decide that no action should be taken in respect of the allegation; or
  - iv. where the allegation is in respect of a person who is no longer a Member of a relevant Authority, but is a Member of another authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the Member concerned of the nature of the allegation and that decision.

- 1.2 Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:
- i. it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;
  - ii. the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
  - iii. the matter should be referred to the Adjudication Panel of the Standards Board for determination.

- 1.3 Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1.1 or 1.2 above, the Sub-Committee shall state its reasons for that decision.

**2. Composition of the Review Sub-Committee**

- 2.1 The Review 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,
- 2.2 Members of the Standards Committee will be divided into three groups, A, B and C, satisfying the composition requirements set out at paragraph 2.1. Each group will appoint an Independent Member as Chairman and will be called in rotation to serve on the Review Sub-Committee when it is required to meet to undertake a review of a decision of the Assessment Sub-Committee within 3 months of the receipt of the request for such a review from the person who made the allegation.
- 2.3 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 Review Sub-Committee is able to meet to determine the assessment within 3 months.

**3. Quorum**

- 3.1 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.

**Appendix 1**

**Assessment Criteria**

The Review Sub-Committees should consider the following in deciding whether to investigate or take other action:

1. Was sufficient information submitted by the complainant to satisfy the Assessment Sub-Committee that the complaint should be referred for investigation or other action? If not, then the complainant should be told that unless or until further information is received, the Assessment Sub-Committee will take no further action.
2. Is the subject Member a Member of this authority? If not, if he or she is a Member of another authority then the matter should be referred to the Monitoring Officer of that

3. Has the complaint been the subject of an investigation or other action relating to the Code of Conduct, or the subject of investigation by other regulatory authorities? If so, then there is nothing to be gained by further action being taken.
4. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
5. Is the complaint too trivial to warrant further action?
6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

## APPENDIX 4

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

The following procedures will apply where the Assessment Sub-Committee or Review Sub-Committee have referred a complaint regarding member misconduct for local investigation and determination.

**Interpretation**

“Member” means the member of the Authority who is the subject of the allegation being investigated, and possibly considered by the Standards Committee, unless stated otherwise.

“Investigator” means the Monitoring Officer, the deputy monitoring officer or other investigating officer and/or any nominated representative of any of the above.

“ESO” means Ethical Standards Officer at the Standards Board for England

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

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

“Legal Advisor” means the officer responsible for providing legal advice to the Standards Committee or Standards Sub-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. The Standards Committee (England) Regulations 2008 provide for a Monitoring Officer to carry out an investigation into a complaint that a member or co-opted member may have failed to comply with the Authority's Code of Conduct.
2. In carrying out the investigation 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 ESO or the Standards Committee, will inform:
  - a) the member who is the subject of the allegation of failure to comply with the Code of Conduct;
  - b) the person who made the allegation;
  - c) the Standards Committee of any other authority concerned; and
  - d) any Parish Council involved,

- that the matter has been referred for investigation.
4. Subject to paragraphs 7 and 8 below, the Monitoring Officer, or the Investigator must investigate any allegation referred by the Standards Committee.
  5. The Monitoring Officer or Investigator will give any Member who is the subject of the investigation the opportunity to comment on the allegation made.
  6. The Monitoring Officer or Investigator may, in carrying out any investigation, do any or any combination of the following:
    - a) make such inquiries of any person as the Monitoring Officer or Investigator thinks necessary or expedient for the purpose of conducting that investigation;
    - b) require any person to give such information or explanation as the Monitoring Officer or 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 may reasonably be needed 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 Monitoring Officer or Investigator to be necessary for the purpose of conducting the investigation.
  7. In the case of an investigation pursuant to the reference under Section 60(2) or (3) of the Local Government Act 2000, the Monitoring Officer/Investigator 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. The ESO must respond to a request under paragraph 7 within 21 days of its receipt and may –
    - a) direct that the matter be so referred for investigation, in which case the investigation by the Monitoring Officer/Investigator shall cease; or
    - b) direct the Monitoring Officer/Investigator concerned to continue the investigation in accordance with the Regulations. The Monitoring Officer/Investigator may not then make any further request under paragraph 7 above in respect of that matter.
  9. At the conclusion of any investigation the Monitoring Officer/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, other than a Parish Council of which the person who was the subject of the investigation is a member, if other authority so requests.

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

10. Where a matter is referred to a 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 regulation 17 of the Standards Committee (England) Regulations 2008.

**References back from Monitoring Officer.**

11. (1) Where a matter is referred to a Monitoring Officer under section 57A(2)(a) of the Local Government Act 2000 for investigation, the Monitoring Officer/Investigator may, subject to paragraph (4), refer that matter back to the Standards Committee concerned if –
- (a) as a result of new evidence or information, the Monitoring Officer/Investigator 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 under section 57A(2) of the Local Government Act 2000 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 person who is the subject of the allegation –

- (i) has died; or
  - (ii) is seriously ill; or
  - (iii) has resigned from the authority concerned, and the Monitoring Officer/Investigator 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 under Regulation 16, the Standards Committee shall make a decision under section 57A(2) of the Local Government Act 2000 as if the matter had been made to it under 57A(1) of that Act.
- (3) In forming an opinion for the purposes of paragraph (1)(a), a Monitoring Officer/Investigator may take account of –
- (a) the failure of any person to co-operate with an investigation; or
  - (b) an allegation that the member concerned 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 a Standards Committee considers a matter referred back to it under this regulation, it may direct that the matter should not be referred back a further time.

#### **Consideration of reports by Sub Committee**

12. (1) Where a Monitoring Officer refers a report under regulation 14 or 15, it shall be to the sub committee, which referred the complaint for investigation. That sub committee shall convene to consider that report and make one of the following findings –
- (a) that it accepts the Monitoring Officer's /Investigator's finding of no failure ("a finding of acceptance"); or
  - (b) 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.
- (3) If the monitoring officer makes a finding that the code of conduct has been broken then the matter shall be referred to the Hearings Sub-Committee for hearing.
13. After a finding of no failure, the Standards Committee will give written notice of the finding to
- The member who is the subject of the finding of no failure;
  - The ESO concerned;
  - Any person who made an allegation that gave rise to the investigation;
  - Any Parish Council concerned;
  - The Standards Committee of the authority concerned, if not the Standards Committee that made the finding.
14. 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.
15. The Adjudication Panel for England may appoint a tribunal to deal with references made under paragraph 12(c) above.
16. 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)**

17. Where the Standards Committee or the Hearings Sub-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.
18. 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.
19. The 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 Committee may not adjourn the hearing more than once under the provision of this paragraph.
20. The 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.

21. 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 procedure rule 20 above on this matter.
22. The Committee will reconvene to consider the matter within three months of the ESO's direction under procedure rule 18(b) above, or as soon as practicable thereafter.

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

23. Following a hearing, the 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**

24. If the Committee finds that the member, who was the subject of the hearing 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.
25. If the Committee finds that the member, who was the subject of the hearing 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 –
  - (i) censure of that member;
  - (ii) restriction for a period up to a maximum of six months of that member's access to the premises of the Authority and the member's use of the resources of the Authority, provided that any such restrictions imposed upon the Member 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 of that member for a period up to a maximum of six months;
  - (iv) suspension of that member for a period up to a maximum of six months;
  - (v) a requirement that the member submits a written apology in a form specified by the Committee;
  - (vi) a requirement that the member undertakes training as specified by the Committee;
  - (vii) a requirement that the member participates in such conciliation as specified by the Committee;
  - (viii) suspension or partial suspension of the member for a period up to a maximum of six months or until such time as he/she submits a written apology in a form specified by the Committee;
  - (ix) suspension or partial suspension of the member for a period up to a maximum of six months or until such time as he/she undertakes such training or conciliation as the Committee may specify;
26. Any sanction imposed shall commence immediately following its imposition by the Committee except that the Committee may direct that a sanction imposed under any sub-paragraphs (ii) to (ix) of procedure rule 25 above shall commence on such date, within a period of six months after the imposition of that sanction, as the Committee may specify in its direction.

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

27. The Committee, shall as soon as reasonably practicable after making a finding under paragraphs 23 and 24 –
- (a) give written notice and the reasons for it to –
    - (i) the member who is the subject of the finding;
    - (ii) the Standards Board for England
    - (iii) the Standards Committee of any other authority concerned;
    - (iv) any Parish Council concerned; and
    - (v) any person who made an allegation that gave rise to the investigation.
  - (b) subject to paragraph 28, 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 Committee considers it appropriate, on the web page of any authority concerned and in any other publication.

28. Where the 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 27(b) shall not apply.
29. In a case where the member who was the subject of the hearing 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 27 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.
30. In a case where the member who was the subject of the hearing had failed to comply with the Code of Conduct and imposed a sanction, the written notice referred to in paragraph 27 above must specify details of the failure; give reasons for the 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**

31. Where the 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 Monitoring Officer 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**

- 2.1 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,
- 2.2 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.
- 2.3 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.

## **3. Quorum**

- 3.1 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.

## APPENDIX 5

**MONITORING OFFICER PROTOCOL****Purpose**

Instructions from the Standards Committee to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegations that a Member of a relevant Authority has failed to comply with the Code of Conduct.

**1 Receipt of Allegations**

- 1.1 The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a Member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to him/her immediately upon receipt by the Authority.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- 1.3 Complaints shall only be entertained where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his/her opinion that would be in the public interest.

**2 Notification of Receipt of Allegations**

- 2.1 All relevant allegations (other than allegations clearly not about Member conduct) must be assessed by the Assessment Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant Member to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, 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.
- 2.2 Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant Member, the Monitoring Officer will promptly and in any case in advance of the relevant meeting:
  - 2.2.1 acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessment Sub-Committee at its next convenient meeting;

- 2.2.2 notify the Member against whom the allegation is made of receipt of the complaint and state that the allegation will be assessed at the next convenient meeting of the Assessment Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Assessment Sub-Committee, or in his/her absence the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;
- 2.2.3 collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;
- 2.2.4 seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- 2.2.5 make arrangements through the Committee Administration Manager for an Assessment Sub-Committee to be held as soon as practicable and place a report, including a copy of the allegation, such readily available information and his/her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for that meeting.

### **3 Local Resolution**

- 3.1 Local resolution is not an alternative to reporting the allegation to the Assessment Sub-Committee which must deal with the initial consideration of the complaint.
- 3.2 However, where, in the course of investigation, the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the Member against whom the allegation has been made 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 Member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Assessment Sub-Committee as required, and at the same time report the response of the Member concerned and of the complainant. Where the 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 may take that into account when considering whether the matter merits further action.

### **4 Review of Decisions not to Investigate**

- 4.1 Where the Assessment Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Review Sub-Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Assessment Sub-Committee in respect of the matter, the summary of the Assessment Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

## **5 Local Investigation**

- 5.1 It is recognised that the Monitoring Officer might not personally conduct a formal local investigation.
- 5.2 It is a matter for the Monitoring Officer to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.