

Agenda

Item:

- Report to: Standards Committee
- Date: 15 February 2005
- Report from: Borough Solicitor and Monitoring Officer
- Title of report: **LOCAL INVESTIGATION OF STANDARDS COMPLAINTS**
- Purpose of report: To inform members of the implications for the Committee of the regulations governing the local investigation of complaints and to recommend adoption of the procedures set out in the appendices.
- Recommendations:
- 1. That the Council be requested to make contingency provision for the cost of appointing external investigators and legal advisers for That the same procedures for local investigation and local hearings be applied for the enforcement by the Standards Committee of complaints of breaches of local protocols individual case hearings as required in the current year, and that formal provision for such costs be made in the Committee's Budget for future years.**
 - 2. That the Council provide an indemnity to Investigating Officers against any claims for defamation, and that the**
-

Council insure such risk.

- 3. That the Committee approve the Procedure for Local Investigations set out at Appendix One.**
 - 4. That the amended Procedure for local hearings set out in Appendix One be adopted by the Committee**
 - 5. That the same procedures for local investigation and local hearings be applied for the enforcement by the Standards Committee of complaints of breaches of local protocols.**
-

1.0 Introduction

- 1.1 New regulations now enable the Standards Board for England to refer complaints of Councillor misconduct to the Monitoring Officer of a local authority for local investigation, instead of investigation by the Standards Board's Ethical Standards Officers, before a complaint is determined by the Authority's Standards Committee (or Sub-Committee¹). The Standards Board has published guidance as to how local authorities should arrange for the conduct of such local investigations, and the first cases will now start to be referred to individual authorities for local investigation and determination under these regulations. The regulations also make important amendments to the powers of Standards Committees, even in cases which have been investigated by an Ethical Standards Officer.
- 1.2 This is a further step in giving local authority Standards Committees responsibility for complaints of Councillor misconduct, and will assist the Standards Board in ensuring that the less serious complaints are dealt with promptly.
- 1.3 This report sets out the implications of the regulations and recommend a model procedure for such local investigations and an amended procedure for local standards hearings for adoption by the Standards Committee.

2.0 Pre-Investigation

- 2.1 When the Standards Board receives a complaint, it has first to decide whether the complaint appears to relate to a possible failure to comply with the Code of Conduct, and then whether it merits investigation. The Standards Board will now notify the Monitoring Officer of the complaint at this early stage and ask for background information, in order to ensure that it only refers for investigation those complaints which really merits such investigation. Whilst there is no duty on the Monitoring Officer to seek to resolve the complaint at this stage, and many complaints will not be capable of such local resolution, this may enable the Monitoring Officer in appropriate cases to explore whether there is anything which the Councillor and/or the authority could do to resolve the complaint and thereby avoid the time and cost of a formal investigation. Such local resolution would be effected by securing the agreement of the

¹ In this report, I have referred to the Standards Committee throughout. In practice the Standards Committee can now delegate the conduct of individual hearings to Sub-Committees, and references to the Standards Committee should also be read as references to such Sub-Committees.

complainant, or otherwise persuading the Standards Board, that the complaint be not investigated or that no action is required on it.

3.0 Local Investigations

3.1 Receipt of the Complaint

Under the new regulations, where the case is referred by the Standards Board for investigation, it goes to an Ethical Standards Officer who decides whether to allocate it to one of the Standards Board's own investigators or, now, to refer it to the authority's Monitoring Officer. The ESO will not refer matters for local investigation where the serious nature of the matter means that it is likely to require a sanction in excess of the Standards Committee's maximum sanction of 3 months' suspension. Other criteria highlighted by the Standards Board are:

- the matter does not appear to need the heavier penalties available only to The Adjudication Panel for England;
- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an ethical standards officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

The ESO is less likely to refer cases if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.

In referring a complaint to the Monitoring Officer, the ESO will send a copy of the original complaint letter and of any other relevant information which he/she possesses. In exceptional cases, such as a single letter containing a number of different complaints, the ESO may edit the complaint letter and merely pass on those parts relevant to the particular complaint.

On receipt of the referred complaint, the Monitoring Officer will notify the Councillor and the complainant and will arrange for the investigation.

The Standards Board recommends that at this point the Monitoring Officer notify the members of the Standards Committee in a confidential memorandum that he/she is conducting an investigation, but should not inform them of the identity of the member or the complainant in order to avoid any risk of prejudicing any subsequent hearing. This seems to me to be a pretty pointless exercise. The choice must be between not advising members of the

Standards Committee at all at this stage, or advising them in confidence of the basic facts of the complaint. Whilst appreciating the risk of prejudice, it seems to me to be better to provide members with the following information, under a requirement for confidentiality:

- (i) the name of the Councillor against whom the complaint is made;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) a brief description of the conduct which is the subject of the allegation;
- (iv) the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation; and
- (v) of the identity of the Investigating Officer.

3.2 Appointment of the Investigating Officer

The Monitoring Officer remains the chief policy adviser to the Standards Committee and the primary contact for Councillors who have enquiries on standards issues, such as whether they have a personal or prejudicial interest in a particular matter. That role is incompatible with personally undertaking the Investigating Officer role, which includes presenting the investigation report at any local standards hearing, so the Monitoring Officer will need to appoint another person to undertake the investigation. In appropriate cases, the Monitoring Officer may be able to appoint another officer of the authority to undertake the investigation, but in sensitive cases it may be appropriate to appoint an outside investigator, either borrowing from another authority for the purpose or appointing an experienced commercial investigator for the purpose. Whilst the Monitoring Officer has a statutory power to make such appointments, it will be necessary to make financial provision for the cost of such investigations. The actual cost is hard to estimate as we have no experience of the number or nature of the matters which will be referred for local investigation, so this needs to be a “contingency” item in the current year, but specific financial provision will have to be made in the Committee’s Budget for future years.

The Investigating Officer will be required to produce a full report, setting out his conclusions as to the facts of the matter and whether the Councillor did or did not fail to comply with the Code of Conduct. One area of particular concern to any Investigating Officer will be

the risk of a defamation claim² from the Councillor or any other person mentioned in the report. The likelihood of such a claim is very low, but if each Investigating Officer had to take out their own legal costs insurance it would push up their fees considerably. I recommend, therefore, that the Council grant an indemnity against the legal costs of defending any such claim and any damages which might be awarded, and to arrange insurance cover as appropriate.

Note that the position of the Monitoring Officer as prime point of advice to individual members on standards issues will give rise to conflicts of interest which would rule the Monitoring Officer out from acting as the legal adviser to the Standards Committee for individual case hearings. Accordingly, the Monitoring Officer will need to arrange for another legal officer to act as the legal adviser to the Standards Committee for individual case hearings. On occasion, this may require borrowing such an adviser from another local authority or instructing a private practice solicitor for this purpose, for which appropriate budget provision will be required.

3.3 Procedure for Local Investigations

The Committee needs to approve a procedure for local investigations, which will form part of the instructions to the Investigating Officer and will inform both the Councillor and the complainant as to how the matter will be dealt with. I attach as Appendix One a recommended procedure for local investigation, which complies with the regulations and guidance from the Standards Board. Under this procedure, the investigation would run as follows:

- (a) The Monitoring Officer advises the Councillor, the Complainant and any Parish or Town Council of receipt of the complaint, of the identity of the Investigating Officer and of the Investigation Procedure. He/she will also provide the Councillor with a copy of the complaint;
- (b) The Investigating officer will contact the Councillor and the complainant for their comments and to identify any persons who he/she should interview and any evidence which he/she should examine;

² An Investigating Officer will be entitled to the defence of “qualified privilege” in the preparation of his/her report unless the claimant can demonstrate that the Investigating Officer was motivated by malice. However, the legal costs of fighting off a defamation action can be very considerable and, at least for the moment, conditional fee agreements are available for pursuing defamation actions. Note that, where the Investigating Officer’s report is published as a result of its presentation to the Standards Committee, it is the authority which is then responsible for the publication and potentially liable for any defamatory material in the report.

- (c) The Investigating officer will conduct such interviews as appear to him/her to be necessary, including more detailed interviews with the Councillor if required;
- (d) The Investigating Officer will send his/her full draft report to the Councillor and the complainant, and at least extracts to any person who has provided evidence which he/she has relied upon in writing the report, and give them 10 days for them to send him/her any comments or suggested corrections on the draft report;
- (e) The Investigating Officer will produce a final report, taking account of any such comments and suggested corrections and send it to the Monitoring Officer;
- (f) Where the Investigating Officer concludes that there has not been a failure to comply with the Code of Conduct, he/she will report to the Standards Committee. The Standards Committee will consider the report and any representations from the Councillor and will either:
 - (i) accept the Investigating Officer's conclusions and take no further action, or
 - (ii) resolve that the matter should be considered at a formal hearing. Note that this is not a finding of fault on the part of the Councillor but merely a conclusion that they are not prepared at that stage to accept the Investigating officer's conclusions and that the matter merits examination at a formal hearing.
- (g) Where the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct, the matter must go to a formal hearing without such a preliminary step.
- (h) If the matter goes to a formal hearing, that hearing would be conducted in exactly the same manner as a formal hearing on an ESO's report except that the Investigating Officer takes the place of the Standards Board's representative in presenting the report and introducing any relevant evidence and witnesses.

Under this procedure, in order to prevent any prejudice to the Standards Committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of that investigation, until they receive the agenda and papers, including the Investigating Officer's report, for the meeting which is to consider that report.

3.4 Additional Failures to Comply with the Code of Conduct

Where an ESO is conducting an investigation and identifies evidence of additional failures to comply with the Code of Conduct, either by the original Councillor or by other Councillors, he/she can add those matters into his/her investigation and report. The regulations provide that where a matter is referred for local investigation, the Investigating Officer's remit is limited to the conduct that comprises the subject matter of the original complaint. Accordingly, where he/she identifies additional matters outside the scope of the original complaint, he/she will not be able to add them into his/her investigation. However, his/her remit is to conclude whether the conduct constitutes a failure to comply with the Code of Conduct, and he/she is therefore entitled to conclude that the conduct constitutes a failure to comply with paragraphs of the Code of conduct other than those specifically cited by the complainant. By way of example, if the complaint were one of rudeness by one Councillor to another, the Investigating Officer would not be entitled to include in his investigation any other instances of such rudeness, but would be entitled to conclude that the instance complained of constituted a failure to treat with respect even if the original complaint only suggested that it was conduct likely to bring the authority into disrepute.

3.5 Reference back to the Standards Board

Matters will be referred for local investigation at an early stage. It is, therefore, possible that, during the course of the investigation, it becomes apparent that the conduct complained of is much more serious and that a Case Tribunal, with powers to impose sanctions of up to one year's suspension or up to five year's disqualification, would be the appropriate form for any hearing of the matter, rather than a Standards Committee with a limited power to suspend the Councillor for up to 3 months. The regulations (and the recommended investigation procedure) therefore provide that, at any time during the course of an investigation, the Investigating officer can report to the Monitoring Officer who can request the ESO to resume responsibility for the investigation. The final decision to resume such responsibility rests with the ESO.

4.0 Local Hearings

The regulations also make certain changes in respect of the conduct of local hearings. The attached procedure for local hearings has therefore been amended to take account of these changes, as follows:

4.1 Timing

Where a matter is the subject of local investigation, the hearing must be held (i.e.: completed) within 3 months of the date on which the

Investigating Officer presents his/her final report to the Monitoring Officer.

4.2 Additional Evidence

The regulations now state specifically that, if the Standards Committee in the course of a hearing feels that it needs additional evidence in order to come to a determination of the matter, it can adjourn and request the Monitoring Officer to provide such further information or undertake further investigation, but the Committee can only do so once on any one matter.

4.3 Sanctions

The regulations now make it clear that the Standards Committee has the flexibility to combine sanctions. Accordingly, the Committee can now set the sanctions in any particular case as any one, or combination, of the following:

- (a) censure;
- (b) restriction of access to Council premises or use of Council resources for up to 3 months;
- (c) a requirement to give a written apology;
- (d) a requirement to undergo training;
- (e) a requirement to undertake conciliation;
- (f) suspension or partial suspension for a period of up to 3 months, and
- (g) suspension or partial suspension until the Councillor undertakes training or conciliation or provides a written apology.

This makes it clear that the Standards Committee could, in an appropriate case, determine that the member should be subject to a 3-month suspension but that, if he/she were to provide a written apology and undergo training, the suspension would be reduced to a 2-month partial suspension from just the Planning Board.

4.4 Reference back to the Standards Board

The regulations also allow the Standards Committee to ask the Standards Board to resume responsibility for a matter at any stage. This would normally be where the Investigating Officer's report identifies conduct of such seriousness that the Committee believes that its maximum sanction would be inadequate, but it could be relevant if so many members of the Standards Committee were

conflicted out of any hearing on a matter that it would not be possible to hold a hearing, or if the Committee felt that local circumstances made it impossible to hold a proper and impartial hearing on the matter. Such a request must be directed to the ESO, who has the final decision whether to resume responsibility for the case. Such a request cannot be made once the hearing has been concluded.

5.0 Local Protocols

6.0 The Council is considering adoption of a Protocol for Relationships between Members and Officers, elsewhere on your Agenda today.

Such a local protocols does not form part of the Code of Conduct for Members and so is not enforced by the Standards Board for England, unless the particular conduct is also a failure to comply with the Code of Conduct. An example might be where a failure to treat an officer with “respect, dignity and courtesy”, as required by the Member / Officer relations Protocol also constitutes conduct likely to bring the authority into disrepute under the Code of Conduct.

Enforcement of such local protocols rests with Council, which delegates that responsibility to the Standards Committee, although certain sanctions may require to be confirmed by Council³. The process for enforcing such protocols must be fair, so it is appropriate to apply the same procedures for local investigation and local hearings to complaints of breach of local protocols as to complaints

³ The authority retains a power of self-regulation, to take such action in respect of an individual member as is necessary to enable it to continue to discharge its functions effectively (R v Broadland District Council ex parte Lashley). This power can be exercised initially by the Chief Executive, subject to confirmation by Council, which can be delegated to the Standards Committee. However, because such self-regulatory action is not take under the Section 66 regulations, on a complaint referred from the Standards Board for England, the authority cannot rely on the statutory sanctions including the power of suspension which is granted by the Section 66 regulations. The actions must be necessary to enable the authority to continue to function effectively, rather than for the punishment of the Councillor but might in appropriate cases include:

- a. censure;
- b. prohibition of access to the authority’s premises or from using the authority’s resources, except as necessary to conduct the Councillor’s duties as a Councillor (e.g. barring from the offices, other than the Meeting Rooms, or requiring all telephone and Email contact to be directed through a named officer);
- c. recommending to Council that the Councillor be removed from any relevant positions to which he/she has been appointed by Council, such as Leader, the Executive, Committees or Sub-Committees, or from outside appointments

referred from the Standards Board. The only changes would be that such complaints would only require such enforcement where the monitoring Officer was unable to resolve the matter to the satisfaction of the complainant, and there would be no scope for referring the matter back to the Standards Board for England.

Equalities & Community Cohesiveness	<input type="checkbox"/>
Crime and Fear of Crime (Section 17)	<input type="checkbox"/>
Risk Management	<input checked="" type="checkbox"/>
Environmental issues	<input type="checkbox"/>
Economic / Financial implications	<input type="checkbox"/>
Human Rights Act	<input type="checkbox"/>
Organisational Consequences	<input checked="" type="checkbox"/>

Report written by: Jayne Butters – Borough Solicitor and Monitoring Officer jbutters@hastings.gov.uk Tel: 01424 781733

PROCEDURE FOR LOCAL INVESTIGATION OF REFERRED COMPLAINTS

Introduction and Summary

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors⁴. No departure will be made from this procedure unless and until the Monitoring Officer⁵ has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

This procedure applies to breaches of the authority's Code of Conduct for Members. The authority has also resolved that the same procedure shall apply to the investigation of allegations of breaches of the authority's local protocols⁶, in so far as they apply to Councillors.

Where the Standards Board for England receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Board refers the allegation to an Ethical Standards Officer for investigation⁷. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the authority's Monitoring Officer. If the matter is referred before the Ethical Standards Officer has completed his/her investigation, the Monitoring Officer is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee⁸ (or to a Sub-

⁴ This procedure will apply to allegations of breach of the authority's Code of Conduct by elected and co-opted members of the authority and by the directly elected mayor of the authority (if any), and the word "Councillor" is to be taken to refer to all such persons.

⁵ The "Monitoring Officer" is an officer of the Council who has been designated as the authority's Monitoring Officer under section 5 of the Local Government and Housing Act 1989

⁶ Authorities may supplement their Code of Conduct for Members with local protocols which do not form part of the Code of Conduct. Allegations of breach of a local protocol may also constitute breaches of the Code of Conduct, and so fall within the jurisdiction of the Standards Board. Where a particular allegation of breach of protocol does not form a breach of the Code of Conduct, it would fall to be investigated and determined by the authority concerned.. Accordingly this procedure will apply equally to allegations of breach of a local protocol, but by virtue of a delegation from Council rather than by virtue of the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 – SI 2004 No. 2617.

⁷ Section 58(2), Local Government Act 2000.

⁸ Section 59(4)(c), Local Government Act 2000.

Committee of the Standards Committee convened for the purpose⁹). Similarly, when the Monitoring Officer receives an allegation of a failure by a Councillor to comply with a local protocol, and s/he is of the opinion that the allegation merits investigation, s/he shall arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee. Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority's Code of Conduct for Members or a local protocol, the Standards 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 for Members or a local protocol, or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence.

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 Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

1. Interpretation

- (a) 'Councillor means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's representative.
- (b) 'Investigating Officer" means the Ethical Standards Officer (ESO) who referred the report to the authority (and his or her nominated representative) or, in the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may

⁹ Where an authority determines that individual allegations shall be considered by a Sub-Committee, or Regulations require that a complaint be considered by a Sub-Committee, references in this procedure to the Standards Committee should be read as being references to such a Sub-Committee.

include the Monitoring Officer, and his or her representative).¹⁰

- (c) “The Matter” is the subject matter of the Investigating Officer’s report.
- (d) ‘The Standards Committee’ refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

2 Notification of Reference of Allegation to the Monitoring Officer

(a) Appointment of Investigating Officer

Upon receipt of the allegation from an Ethical Standards Officer, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the authority’s Standards Committee. The Investigating Officer may be an officer of the authority¹¹, an officer of another local authority, or an external Investigating Officer.

The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

(b) Notification to the Councillor

The Monitoring Officer will then notify¹² in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) of the conduct which is the subject of the allegation;

¹⁰ This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the “Investigating Officer” no longer includes the Monitoring Officer.

¹¹ There are two distinct roles, that of the Investigating Officer and that of legal adviser to the Standards Committee. The Monitoring Officer may him/herself take on the role of Investigating Officer. Where he/she does so, he/she must also arrange for a separate legal adviser to the Standards Committee in respect of the allegation.

¹² In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Councillor.

- (iv) of the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation;
- (v) of the procedure which will be followed in respect of the allegation, and
- (vi) of the identity of the Investigating Officer.

The Monitoring Officer shall provide the Councillor with a copy of any report received from the Ethical Standards Officer.

(c) Notification to the Standards Committee

At the same time as notifying the Councillor, the Monitoring Officer will notify each member of the Standards Committee in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(d) Notification to the Person who made the Allegation

At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Initial response of the Councillor

In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct or local protocol which is the subject of the allegation;
- (ii) listing any documents which the Councillor 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,
- (iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iv) providing the Investigating Officer with any information which the Councillor would wish the Investigating Officer to seek from any person or organisation.

(f) Supporting information from the person who made the allegation

In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days

- (I) listing any documents which the person 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,
- (II) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iii) providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

3. Conduct of Investigation

(a) Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Standards Committee a report which, together with any report provided by the Ethical Standards Officer, would provide the Standards Committee with sufficient information to determine whether the Councillor has acted in breach of the Code of Conduct or local protocol and, where there has been a breach of the Code of Conduct or local protocol, whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

(b) Termination of the Investigation

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

(c) Additional Matters

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct or local protocol by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall either:

- (i) (where the additional matter relates to an apparent breach of the authority's Code of Conduct) report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct. The Monitoring Officer will then determine whether to report the additional matter to the Standards Board;
 - (ii) (where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct) report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's local protocols. The Monitoring Officer will then take a decision whether to refer the matter to an Investigating Officer for local investigation and report to the Standards Committee as appropriate. Where the original matter relates to an allegation of breach of a local protocol, and the additional matter relates to a further breach of a local protocol of the same authority, the Monitoring Officer may, with the consent of the Councillor, request the original Investigating Officer to extend his investigation to include the additional matter;
- (d) Following notification to the Councillor, 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 Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(e)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation 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.
- (e) Production of documents, information and explanations
- (i) In the course of the investigation, the Investigating Officer and any person authorised on his/her 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 his/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.

- (ii) In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any authority of which the Councillor is a member to provide any document which is in his/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

(f) Interviews

- (i) Requesting attendance

In the course of the investigation the Investigating Officer may request any person to attend and appear before him/her or otherwise provide any information, document or explanation for the purpose of Paragraph 3(e), as he/she thinks necessary for the purposes of carrying out the investigation.

- (ii) Representation

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

- (iii) Notes of interviews

Where practicable, 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.

(g) Costs

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his/her request, such fees or allowances as he/she considers to be appropriate subject to the maxima set by the authority.

- (h) Reference back to the Standards Board (allegations of breach of the Code of Conduct for Members only)

At any point in the course of the investigation, if the Investigating Officer is of the opinion

- (i) that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
- (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the Ethical Standards Officer to resume his investigation of the matter.

Where the Ethical Standards Officer does resume his investigation, the Monitoring Officer shall ensure that the Councillor concerned, the person who made the complaint and the members of the Standards Committee are informed of such resumption. Where the Ethical Standards Officer declines to resume his investigation, the Monitoring Officer shall instruct the Investigating Officer to continue his investigation.

4. The Draft Report

- (a) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report setting out:
 - (i) the details of the allegation;
 - (ii) the relevant provisions of statute, of the Code of Conduct and any relevant local Protocols
 - (iii) the Councillor's initial response to notification of the allegation (if any);
 - (iv) the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
 - (v) a list of any documents relevant to the matter;
 - (vi) a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;

- (vii) 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;
 - (viii) a statement of his/her draft findings of fact;
 - (ix) his/her conclusion as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol, and
 - (x) any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.
- (b) The draft reports 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 Standards Committee once he/she has considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.
- (d) The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

5. The Final Report

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the standards committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses;

- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
- (i) where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members or a local protocol, he/she will refer the report to the Standards Committee for their consideration, and
 - (ii) where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members or with a local protocol, he/she will refer the report to the Standards Committee for a formal hearing.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to:
- (i) The person who made the complaint;
- and
- (ii) The Ethical Standards Officer
- together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.
- (d) Where the Standards Committee considers the report in accordance with Paragraph 5(a)(ii) above, it shall make one of the following findings:
- (i) That it accepts the Investigating Officer's finding that the Councillor has not failed to comply with the Code of Conduct for Members as set out in the allegation;
 - (ii) That it accepts the Investigating Officer's finding that, on the facts as set out in the report, the Councillor has not failed to comply with a local protocol, or
 - (iii) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.¹³

¹³ Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members or with a local protocol, but simply that, on the basis of the Investigating Officer's report, the Standards Committee is not at this stage prepared to

- (e) Where the Standards Committee finds as set out in Paragraph 5(b)(i) or (ii) above (no failure to comply with the Code of Conduct or with a local protocol), the Monitoring Officer shall, as soon as 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
- (i) The Councillor;
 - (ii) The Ethical Standards Officer;
 - (iii) The Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
 - (iv) The Standards Committee of any other local authority (other than a Parish or Town Council) of which the Councillor is also a member
 - (v) The Parish or Town Council, if the Councillor was also a member of a Parish or Town Council, and
 - (vi) The person who made the allegation.

And shall ask the Councillor whether he objects to the publication of a notice of the finding in at least one local newspaper, and arrange for the publication of such a notice unless the Councillor so objects.

- (f) Where the Standards Committee finds as set out in Paragraph 5(2)(iii) above (that the matter should be considered at a full hearing) or the Investigating Officer's report contains a finding that the Councillor did fail to comply with the Code of Conduct or a local protocol, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings, subject to the following variations:
- (i) The hearing shall be conducted no sooner than 14 days from, and no later than 3 months from the date on which the Monitoring Officer received the report of the Investigating Officer;
 - (ii) the report of the Investigating Officer shall be treated as if it constituted the report of the Ethical Standards Officer;

come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.

- (iii) the Monitoring Officer will not conduct Pre-Hearing enquiries of the Councillor, and
- (iv) the Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom he considers that the Standards Committee should hear in order to be able to give the matter proper consideration.

PROCEDURE FOR LOCAL STANDARDS HEARINGS

1. Interpretation

- (a) ‘Councillor means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor’s nominated representative.
- (b) ‘Investigating Officer” means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).¹⁴
- (c) “The Matter” is the subject matter of the Investigating Officer’s report.
- (d) ‘The Standards Committee’ refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) “The Committee Administrator” means an officer of the authority responsible for supporting the Standards Committee’s discharge of its functions and recording the decisions of the Standards Committee.
- (f) ‘Legal Advisor’ means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority. ¹⁵

¹⁴ This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the “Investigating Officer” no longer includes the Monitoring Officer.

¹⁵ In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Standards Committee. It is therefore convenient for the Monitoring Officer to conduct the pre-hearing process, except in so far as the member requires it to be conducted at a meeting of the Standards Committee, and to

(g) “The Chair” refers to the person presiding at the hearing.

2. Modification of Procedure

The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

3. Representation

The Councillor may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. Note that the cost of such representation must be met by the member, unless the Standards Committee has expressly agreed to meet all or any part of that cost.¹⁶

4. Pre-hearing Procedure (ESO’s Report)

Upon reference of a matter from an Ethical Standards Officer for local determination following completion of the Ethical Standards Officer’s report, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee’s hearing;
- (b) Send a copy of the report to the Councillor and advise him/her of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him/her of the date, time and place for the hearing;
- (d) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (e) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will

present the introductory report to the Standards Committee at the commencement of the hearing. Where the Monitoring Officer is not legally qualified, he/she will need to ensure that a suitably qualified person is available to provide legal advice to the Standards Committee. It is obviously preferable that any such separate legal advisor be present throughout the hearing, in order to be able to provide such advice against an understanding of the context in which the advice is given.

¹⁶ Regulations under Section 101 of the Local Government Act 2000 grant authorities a discretion to provide an indemnity or to provide insurance to Councillors to meet the costs which they may incur in “Part 3 proceedings” (investigations, hearings or other proceedings under Part III of the 2000 Act), any such indemnity or insurance is required to be subject to a requirement to repay any sums received in the event that the member is found to have failed to comply with the Code of Conduct.

require the attendance of the Ethical Standards Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;

- (f) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (g) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All members of the Standards Committee who will conduct the hearing;
 - (ii) The Councillor;
 - (iii) The person who made the allegation, and
 - (iv) The Investigating Officer.

5. Pre-Hearing Process (Local Investigation)

Upon receipt of the final report of the Investigating Officer including a finding that the Councillor failed to comply with the Code of Conduct for Members or the Standards Committee finds that the matter should be considered at a formal hearing, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing¹⁷;
- (b) Send a copy of the report to the Councillor and advise him/her of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him/her of the date, time and place for the hearing;
- (d) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England within 14 days of receipt;

¹⁷ The hearing must be conducted no earlier than 14 days after, and within 3 months of the date when the matter is referred by the Ethical Standards Officer to the Monitoring Officer (in the case of an Ethical Standards Officer investigation) or the date when the Investigating Officer delivers his final report to the Monitoring Officer (in the case of local investigations).

- (e) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and high-lighting the issues which the Standards Committee will need to address, and
- (h) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All members of the Standards Committee who will conduct the hearing;
 - (ii) The Councillor;
 - (iii) The person who made the allegation, and
 - (iv) The Investigating Officer.

6. Legal Advice

The Standards Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Standards Committee should be shared with the Councillor and the Investigating Officer if they are present.¹⁸

7. Setting the Scene

At the start of the hearing, the Chair shall introduce each of the members of the Standards Committee, the Councillor (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Standards Committee will follow in the conduct of the hearing.

8. Preliminary procedural issues

The Standards Committee shall then deal with the following preliminary procedural matters in the following order:

¹⁸ In the interests of openness, the Standards Committee may prefer to receive any such advice in the main hearing room in the presence of the Investigating Officer and the member. Where this is not practicable, the legal advisor should repeat in the presence of the Investigating Officer and the member the advice which he/she has tendered.

(a) Disclosures of interest

The Chair shall ask members of the Standards Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chair shall confirm that the Standards Committee is quorate¹⁹

(c) Hearing procedure

The Chair shall confirm that all present know the procedure which the Standards Committee will follow in determining the matter.

(d) Proceeding in the absence of the member

If the Councillor is not present at the start of the hearing:

- (i) the Chair shall ask the Monitoring Officer whether the Councillor has indicated his/her intention not to attend the hearing;
- (ii) the Standards Committee shall then consider any reasons which the Councillor has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
- (iii) if the Standards Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Standards Committee is not satisfied with such reasons, or if the Councillor has not given any such reasons, the Standards Committee shall decide

¹⁹ A meeting of the Standards Committee is not quorate unless at least three members of the Standards Committee are present for the duration of the meeting. The three members must include at least one Independent member, unless an Independent member would have been present but was precluded from participating in any of the business of the Standards Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Standards Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its members. However it is only a requirement that the parish representative is actually present when the Standards Committee is dealing with a parish matter. Parish Sub-Committees, convened to deal with a parish matter, must have a parish representative as a member of the Sub-Committee, but there is not requirement for him/her actually to attend the meeting for it to be quorate. [The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812.]

whether to consider the matter and make a determination in the absence of the Councillor or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Standards Committee may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chair shall ask the Councillor, the Investigating Officer and the legal adviser to the Standards Committee whether they wish to ask the Standards Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Standards Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Standards Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

9. A failure to comply with the Code of Conduct?²⁰

The Standards Committee will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.²¹

²⁰ The model procedure recommended by the Standards Board suggests that the Standards Committee should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. I suggest that these two are so closely connected that the Standards Committee may find that it can conveniently determine the two together without any loss of fairness.

²¹ Note that the Standards Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigating Officer's report. It is possible that, in the course of their consideration, the Standards Committee apprehend that the member may have failed to comply with the Code of Conduct in some other manner (for example that the member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the member's office or authority into disrespect). Note that such a possible additional or alternative failure will not be within the remit of the Standards Committee as, at that stage, the member will not have had notice of the Standards Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Standards Committee do apprehend a possible additional or alternative failure, a failure by a different member, or a failure in respect of the code of conduct of another authority, they should refer the second

- (a) The Chair shall ask the Councillor to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chair will ask the legal advisor or the Committee Administrator²² to present his/her report, highlighting any points of difference in respect of which the Councillor has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Councillor to confirm that this is an accurate summary of the issues and ask the Councillor to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report.

- (i) If the Councillor admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Standards Committee may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 8)
- (ii) If the Councillor identifies additional points of difference, the Chairman shall ask the Councillor to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Standards Committee is not satisfied with the Councillor's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without

matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Board for England.

²²

As set out above, unless conflicted out, it is likely that the Monitoring Officer will:

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Standards Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the legal advisor to the Standards Committee; and
- (iv) will distribute and publish any required notices of the Standards Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

allowing the Councillor to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Councillor did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigating Officer's report

- (i) If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Councillor and why he/she concluded, on the basis of his/her findings of fact, that the Councillor had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- (ii) If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Standards Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witnesses attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chair shall ask the Councillor if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

(d) The Councillor's response

- (i) The Chair shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- (ii) No cross-examination shall be permitted but, at the conclusion of the Councillor's evidence and/or of the evidence of each witness, the Chair shall ask the

Investigating Officer if there are any matters upon which the Standards Committee should seek the advice of the Councillor or the witness.

(e) Witnesses

- (i) The Standards Committee shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
- (ii) Any member of the Standards Committee may address questions to the Investigating Officer, to the Councillor or to any witness.

(f) Additional Evidence

At the conclusion of the evidence, the Chair shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- (g) If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee

(h) Determination as to whether there was a failure to comply with the Code of Conduct.

- (i) At the conclusion of the Councillor's response, the Chair shall ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the Investigating Officer's report.
- (ii) Unless the determination merely confirms the Councillor's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(a)(i) above), the Standards Committee shall then retire to another room to consider in private whether the

Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.

- (iii) The Standards Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- (iv) The Standards Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Councillor or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Standards Committee.
- (v) At the conclusion of the Standards Committee's consideration, the Standards Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Councillors.
- (vi) The Standards Committee shall then return to the main hearing room and the Chair will state the Standards Committee's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

10 If the Councillor has not failed to follow the Code of Conduct

If the Standards Committee determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) If the Standards Committee apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Standards Committee has just determined), the Chairman shall outline the Standards Committee's concerns and state that the Standards Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chair should then set out any recommendations which the Standards Committee is minded to make to the authority with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the

Investigating Officer and the legal advisor before the Standards Committee finalises any such recommendations.

- (c) Finally, the Chairman should ask the Councillor whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

11. Action consequent upon a failure to comply with the Code of Conduct

- (a) The Chair shall ask the Investigating Officer (if present, or otherwise the legal advisor) whether, in his/her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction.²³

²³

The sanctions which are available to the Standards Committee under the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, Regulation 7, as amended by the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 are any of the following :

- “(i) censure of that member;
- (ii) restriction for a maximum period of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that such restrictions imposed upon the member -
- (aa) are reasonable and proportionate to the nature of the breach; and
- (bb) do not unreasonably restrict the member's ability to perform his functions and duties as a member.
- (iii) partial suspension of that member for a period up to a maximum of three months;
- (iv) suspension of that member for a period of partial suspension of that member for a period up to a maximum of three months;
- (v) a requirement that that member submit a written apology in a form specified by the Standards Committee;
- (vi) a requirement that that member undergo training as specified by the Standards Committee;
- (vii) a requirement that that member undergo conciliation as specified by the Standards Committee;
- (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee
- (ix) partial suspension of that member for a period up to a maximum of three months or until such time as he undergoes such training or conciliation as the Standards Committee may specify;
- (x) suspension of that member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee;
- (xi) suspension of that member for a period up to a maximum of three months or until such time as he undergoes such training or conciliation as the Standards Committee may specify.

Any sanction imposed shall commence immediately unless the Standards Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Standards Committee within six months of the date of the hearing.

A literal interpretation of these powers to aggregate sanctions would indicate that the Standards Committee could impose a combination of suspension and partial suspension,

- (b) The Chair will then ask the Councillor to respond to the Investigating Officer's advice.
- (c) The Chair will then ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Standards Committee may address questions to the Investigating Officer or to the Councillor as necessary to enable him/her to take such an informed decision.
- (e) The Chair should then set out any recommendations which the Standards Committee is minded to make to the authority with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the legal advisor;
- (f) The Standards Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Standards Committee will make to the authority.
- (g) At the completion of their consideration, the Standards Committee shall return to the main hearing room and the Chair shall state the Standards Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Standards Committee will make to the authority.

12. Reference back to the Ethical Standards Officer

If, at any time before the Standards Committee has determined upon any appropriate sanction, the Standards Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Standards Committee, the Standards Committee may instruct the Monitoring Officer to request the Monitoring Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Standards

conditional and unconditional, adding up in any one case to some 12 months suspension in total. However, it was clearly not the intention of the legislature to enable the total combination of sanctions to extend beyond a single period of three months, and any sanctions which apply over a longer period might prove vulnerable on appeal.

Committee of the Ethical Standards Officer's response to such a request.

13. The close of the hearing

- (a) The Standards Committee will announce its decision on the day of the hearing and provide the Committee Administrator with a short written statement of their decision, which the Committee Administrator will deliver to the Councillor as soon as practicable after the close of the hearing;
- (b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Administrator will agree a formal written notice of the Standards Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.

14. Appeals

The Councillor may appeal against the decision of the Standards Committee by writing to the President of the Adjudication Panel for England, ensuring that his/her letter sets out the grounds for such an appeal, includes a statement as to whether or not he/she consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision under Paragraph 9(c).

TERMS OF APPOINTMENT OF INVESTIGATING OFFICER

Dear

APPOINTMENT AS INVESTIGATING OFFICER

In my capacity as Monitoring Officer of Hastings Borough Council, I appoint you as the Investigating Officer in respect of an allegation by Mr/Mrs xxxxxxxxxxxxxxxx (“the complainant”) that Councillor xxxxxxxxxxxxxxxx (“the Councillor”) failed to treat him/her with respect.

1. The complaint

(a) The allegation

I attach as Appendix One a copy of the allegation which you are to investigate. The allegation relates to an alleged failure to comply with the authority’s [Code of Conduct for Members] [local protocol in respect of Member / Officer Relations]

(b) The Complainant

The complainant is Mr/Mrs xxxxxxxxxxxxxxxx, whose contact details are as follows:

(c) The Member

The member against whom the allegation is made is Councillor xxxxxxxxxxxxxxxx (“the Councillor”), whose contact details are as follows:

2. The Code of Conduct for Members / The XXXXX Local Protocol

I attach as Appendix Two a copy of the authority’s Code of Conduct for Members and a copy of the authority’s [local protocol in respect of Member / Officer Relations] which is/are binding on all Councillors.

3. The Function of the Investigating Officer

The principal 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 Standards Committee/Sub-Committee, to enable the Standards Sub-Committee to come to an informed decision as to whether the Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, and upon any consequential action.

Specifically, you will:

- (a) undertake a thorough investigation of the complaint in accordance with the authority's Procedure for Local Investigations attached as Appendix Three;
- (b) come to a finding as to whether the Councillor did or did not fail to comply with the authority's Code of Conduct and/or the XXXXX Local Protocol.
- (c) prepare and provide to me a report in Word for Windows electronic format setting out:
 - (i) the details of the allegation;
 - (ii) the Councillor's initial response to notification of the allegation (if any);
 - (iii) the relevant evidence, information, advice and explanations which you have obtained in the course of the investigation;
 - (iv) a list of any documents relevant to the matter, together with copies of such documents where available;
 - (v) a list of those persons whom you have interviewed and those organisations from whom you have sought information;
 - (vi) 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;
 - (vii) a statement of your findings of fact;
 - (viii) your conclusion as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members or a local protocol, and
 - (ix) any recommendations which the you wish to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the failure to

comply with the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any failure to comply with the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach

- (d) present your report to the Standards Committee/Sub-Committee, in accordance with the Procedure for Local Determination Hearings attached as Appendix Four.
 - (i) If your finding is that there has not been such a failure to comply, you will initially present your report to an ordinary meeting of the Standards Committee/ Sub-Committee.
 - (ii) If that Standards Committee/ Sub-Committee determine that the matter should be the subject of a formal hearing, you will additionally present your report to the formal hearing, including introducing any witnesses whose evidence you consider to be necessary for the Committee/Sub-Committee to reach a considered conclusion on the matter, and undertaking any questioning of the Councillor and of any witnesses whom he may call at the hearing.
 - (iii) If the Standards Sub-Committee directs you to prepare and provide any additional evidence in respect of this matter, you will do so as directed;
- (e) (if the Councillor appeals against the decision of the Sub-Committee) provide such evidence and assistance as may be required for the conduct of the appeal including appearing at any appeal hearing, and
- (f) (if any person seeks judicial review of the decision of the Standards Sub-Committee) provide such evidence and assistance as may be required for the conduct of the judicial review including appearing at any trial thereof.

4. Conduct of the Investigation

- (a) Your objective is to complete and present your final report to me within 8 weeks of the date of this letter of appointment.
- (b) As soon as possible (and immediately following receipt of the initial responses of the Councillor and the Complainant) you will prepare and send to me an Investigation Plan, setting out

- (i) the key issues which you need to resolve in the course of your investigation;
 - (ii) any persons who you intend to interview and what information you intend to seek from them;
 - (iii) what documents you intend to obtain, and the reason why you consider that each document is relevant;
 - (iv) any further information which you will require for the purpose of your investigation and where you intend to obtain that information;
 - (v) your intended timetable for each of these processes;
 - (vi) your intended timetable for submission of your draft report to persons interviewed during the course of your investigation;
 - (vii) your intended timetable for submitting your final report to me, and
 - (viii) your estimate of the number of hours which you and each of the persons assisting you will spend in undertaking this investigation up to the point of submission of your final report to me.
- (c) If at any stage of your investigation you find that it is necessary to depart significantly from this Investigation Plan, you will advise me in writing as soon as possible of any necessary changes.
- (d) If at any stage in your investigation you become aware of any additional matter, which appears to you to amount to a further breach of the Code of Conduct for Members or a local protocol, or any breach of law, by the Councillor or any other member or officer of any local authority, you will advise me in writing as soon as possible of the additional matter and of the information which leads you to the conclusion that it constitutes such a breach. I will be responsible for reporting the matter to any other agency, such as the Police, the Standards Board for England or the authority's external auditor.

5. Cessation of Investigation

- (a) If at any stage you fail to discharge your responsibilities in accordance with the Investigation Plan, I may give you notice in writing that I am terminating this instruction. You will then terminate your investigation immediately upon receipt of such

notice and as soon as practicable thereafter provide me with all documentation in your possession or control associated with or produced during the course of the investigation. The authority will then pay you the lesser of the fixed fee specified below, or the sum which would otherwise be due to you, calculated by reference to the hourly rates set out below, in respect of the time which you and any approved assistants have reasonably incurred on the matter prior to such termination.

- (b) If at any stage of your investigation, you are of the opinion that the matter is of such a nature that the appropriate sanction would be likely to be in excess of the maximum sanction available to the Standards Committee (3 months' suspension as a Councillor), or that it would otherwise be inappropriate for the matter to be the subject of determination by the Standards Committee, you will advise me in writing as soon as possible of your conclusion and of the information which leads you to this conclusion. I may then request the Standards Board for England to resume responsibility for the investigation. If the Standards Board for England agree to resume responsibility for the investigation, I will instruct you to cease your investigation and as soon as practicable thereafter provide me with all documentation in your possession or control associated with or produced during the course of the investigation. The authority will then pay you the lesser of the fixed fee specified below, or the sum which would otherwise be due to you, calculated by reference to the hourly rates set out below, in respect of the time which you and any approved assistants have reasonably incurred on the matter prior to such termination.

6. Confidentiality and Defamation

- (a) You will not disclose the fact of this investigation or any information which you receive in the course of the investigation to any party except as may be necessary to enable you to undertake this investigation and report or otherwise to comply with this instruction. If you are asked whether you are undertaking an investigation or asked to comment upon the matter, you will refer all such enquiries to me for reply.
- (b) Such duty of confidentiality to the authority shall not apply in respect of any information which is already in the public domain or where you are required by law to disclose such information.

- (c) The authority undertakes to indemnify you against the reasonable costs of defending any defamation action or threatened defamation action against you arising from your role as Investigating Officer and any damages which may be awarded against you in such an action. The authority will insure this risk. Accordingly you will advise me immediately of any such defamation action or threatened defamation action, and you will not admit any liability in respect of any such action without the prior approval of the authority or the authority's insurers.

7. Copyright and access to documents

- (a) Copyright in your final report will belong to the authority from the date of delivery of the report to me.
- (b) I reserve the right to undertake a file audit for quality control purposes. If so required in writing, you will within 2 working days of receipt of such request produce all documentation in your possession or control associated with or produced during the course of the investigation for my inspection.
- (c) Following completion of your investigation, you must send all the documentation associated with and produced during the course of your investigation to me as soon as practicable after delivery of your final report. The authority will be responsible for ensuring the security of such documentation, retaining the same for a period of 6 years from the date of delivery of your final report, producing it whenever so required, and disposing of it as required at the expiry of such period in accordance with the requirements of the Data Protection Act.

8. Fees and Costs

The authority will pay

- (a) a fee for the conduct of the investigation and preparation and delivery to me of your final report, payable within 30 days of such delivery. This fee will [comprise a sum of £AAAA pounds inclusive of VAT] [be calculated on the basis of an hourly rate of £BBBB an hour for yourself and £CCCC an hour for any assistant for any time reasonably engaged in the conduct of the investigation and preparation of the report, any travelling time being calculated at half the above rates unless actively engaged in the investigation or the preparation of the report, such rates to be inclusive of VAT];
- (b) a fee in respect of your preparation for and attendance at any meetings of the Standards Sub-Committee or at any appeal

against any decision of the Standards Committee, or any judicial review of the decision of the Standards Sub-Committee, calculated on the basis of an hourly rate of £BBB an hour for yourself and £CCC an hour for any assistant for any time reasonably engaged in the conduct of the investigation and preparation of the report, any travelling time being calculated at half the above rates unless actively engaged in the investigation or the preparation of the report, such rates to be inclusive of VAT; and

- (c) your reasonable expenses incurred in the conduct of the investigation and preparation of the report, preparation for and attendance at the Standards Sub-Committee, preparation and assistance in the preparation for and attendance at any appeal or judicial review, including mileage at 40p per mile and/or standard class rail fare and/or bus or taxi fares.

Such fees and expenses will be paid within 30 days of receipt from you of a detailed statement of such fees and expenses.

Yours sincerely,

Monitoring Officer

Attachments:

1. The allegation letter
2. The Code of Conduct and local protocols
3. The procedures for local investigation and determination of standards of conduct allegations