

**Agenda Item:**

**Report to:** STANDARDS COMMITTEE

**Date:** 7 September 2006

**Report from:** BOROUGH SOLICITOR AND MONITORING OFFICER

**Title of report:** **REVIEW OF THE PROCEDURE FOR LOCAL  
INVESTIGATION AND HEARING OF COMPLAINTS**

**Purpose of report:** To seek the agreement of the Committee to the proposed changes to the Procedure.

**Recommendations:** To approve the proposed changes.

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## Introduction

1. At its meeting on 15 February 2005, Committee adopted a procedure for the investigation and hearing of complaints. Members requested that the procedure be reviewed in 12 months time.
2. At the time, the Committee was in the process of its first investigation and determination of a complaint referred by the Standards Board. That process did not involve a full hearing and so it has not been possible to test out the full procedure. However, one or two issues have arisen and it is necessary to consider these now.

## Access to Information

3. When the Committee considered the procedure for hearings, members indicated that they wished reports to be treated as exempt information on issue of the agenda and for the decision to be made at Committee as to whether the matter should be heard in public or the exemption relied upon. At the time I advised Committee of the very clear view of the Standards Board, as issued in their Guidance, that matters should wherever possible be heard in public and should only be heard in private where the report contains confidential material (e.g. in the interests of national security) or it is necessary to protect the private lives of those involved. It may be that parts of the report are sensitive in which the guidance suggests that that part only is considered in private but the remainder of the papers are published and heard in public.
4. In respect of the only investigation and determination referred to us by the Standards Board, the papers were treated as exempt information and at the meeting members resolved that the matter should be considered in private. Members will be aware that the Part 2 papers found their way into the hands of the press and this is the subject of on-going investigation by the Standards Board Ethical Standards Officer.
5. Whilst the draft provisional report of the Ethical Standards Officer is confidential, I do not believe it would be breaking any confidence to say that the response of the Ethical Standards Officer on the question of whether matters should be heard in private or public was predictable.
6. The law on public access to information changed on the day after the Standards Committee hearing and there are now only 7 classes of exempt information contained in Schedule 12A Local Government Act 1972, as shown in Appendix A.
7. Members will be aware that in the past there were qualifications on exemption under different paragraphs of Schedule 12A. Now there is one overriding qualification for all 7 paragraphs namely that such information is exempt if and so long as, in all the circumstances of the

case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

8. This brings the rules on exempt information under Local Government Act 1972 into line with the Freedom of Information Act 2000 exemptions. It is important to understand that the balancing of the public interest has to be addressed and that, like the Freedom of Information Act 2000, the balance tilts towards openness.
9. Members need to understand that this change has the force of law. The status of the Standards Board Guidance was that the Committee has to have regard to it. The change in the law taken with the Standards Board guidance, makes the previous stance on the marking of papers as exempt untenable.
10. As proper officer for the purposes of Section 100B(2) Local Government Act 1972 (Access to agenda and connected reports), I have the power to exclude public access to reports or parts of reports relating to items during which, in my opinion, the meeting is likely not to be open to the public.
11. In future, I shall make the decision whether or not to treat reports as exempt subject to the public interest test qualification and having regard to Standards Board guidance. In those circumstances, it is more likely than not that the papers will be issued as accessible to the public. If there are particularly sensitive areas in the investigating officer's report or witness statements, then it may be that those would be treated as exempt whilst the bulk of the report and evidence would be accessible.

#### Amendments to Procedure for Local Investigation of Referred Complaints

12. I have amended the Procedure as shown in bold in Appendix B. Some of the amendments are corrections of typographical errors or cross-referencing. There are substantive changes brought about by the change in the law on exempt information.

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

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