

## PROCEDURE FOR 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 Councillors<sup>[4]</sup>. The investigation follows a decision of the Assessment Sub-Committee or the Review Sub-Committee that an allegation of breach of the Code of Conduct should be referred to the Monitoring Officer for investigation. No departure will be made from this procedure unless and until the Monitoring Officer<sup>[5]</sup> 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 protocols<sup>[6]</sup>, in so far as they apply to Councillors.

Where the Standards Committee of the Council receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Assessment Sub-Committee or the Review Sub-Committee may refer the allegation to the Monitoring Officer for investigation<sup>[7]</sup>. 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 Committee<sup>[8]</sup> (or to a Sub-Committee of the Standards Committee convened for the purpose<sup>[9]</sup>). 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 or a sub-committee of 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.

Alternatively, where a Standards Board ethical standards officer has completed an investigation and decided that a complaint should be determined by the Standards Committee, he or she will refer the report to the Monitoring Officer, who must then refer the report to the Standards Committee for consideration, after a copy of the report has been sent to and received by the Councillor concerned.

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 relation to matters referred to the Monitoring Officer for investigation by the Assessment or Review Sub-Committees the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative).<sup>[10]</sup>
- (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 reference from the Assessment or Review Sub-Committee for investigation of a complaint, 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 authority<sup>[11]</sup>, 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.

Unless directed otherwise by the ethical standards officer or standards committee, the Monitoring Officer shall notify the persons as set out in (b) to (d) below.

(b) Notification to the Councillor

The Monitoring Officer will then notify<sup>[12]</sup> in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him/her for 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;
- (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.

(c) The Monitoring Officer shall notify the Standards Committee of any other authority concerned, that the matter has been referred for investigation.

(d) At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation that the matter has been referred for investigation.

(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 Monitoring Officer becomes aware that

i) as a result of new evidence or information, which in his or her opinion is materially more or less serious than may have seemed apparent to the Sub-Committee when the matter was referred for investigation, and that the sub-committee would have made a different decision in light of that new information; or

ii) the person who is the subject of the allegation has died, is seriously ill or has resigned from the authority concerned, and the Monitoring Officer is of the opinion that it is no longer appropriate to continue the investigation

the Monitoring Officer may refer the matter back to the Standards Committee and they shall make a determination to either refer the matter for investigation by the Monitoring Officer, refer it to the Standards Board for England for investigation or decide to take no action.

In reaching a conclusion under i) above, the Monitoring Officer may take account of the failure of any person to co-operate with an investigation; or an allegation that the member concerned has engaged in a further breach of the code of conduct; or an allegation that another member has engaged in a related breach of the code of conduct of a relevant authority.

(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)

#### 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 the 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 may 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.

At the same time as sending out the final report, the Monitoring Officer shall advise the councillor that the presumption is that the matter will be considered or heard in public, unless the Monitoring Officer is satisfied that it is in the public interest that the matter is heard in private rather than in public. In reaching this decision, the Monitoring Officer will take into account that, in the event that there is a finding of no breach, the Councillor is entitled to prohibit publication of the Standards Committee's finding of no failure to comply with the Code. Subject to this presumption, the Monitoring Officer will invite the Councillor and



the Investigating Officer to make representations and to give reasons for any request that the matter be heard in private.

- (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) any Ethical Standards Officer concerned

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(b)(i) 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 (a finding of acceptance);

(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. [\[13\]](#)

(iv) That the matter should be referred to the Adjudication Panel for determination; provided that the Committee can only reach this conclusion where it has determined that the sanctions available to it would be insufficient were a finding of failure were to be made and the president or deputy president of the Adjudication Panel has agreed to accept the referral.

- (e) Where the Standards Committee makes a finding of acceptance as set out in Paragraph 5(d)(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) Any Ethical Standards Officer concerned;
- (iii) 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, publication on the Council's website or in any other way specified by the Committee 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(d)(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 Standards 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; 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 to the Monitoring Officer by the Assessment or Review Sub-Committee for 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. [\[15\]](#)
- (g) "The Chair" refers to the independent member presiding at the hearing.

### 2. The Procedure

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The Standards Committee shall have regard to the guidance of the Standards Board in its procedure for Standards Committee hearings and determinations.

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. The Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. A warning from the Chair should normally be given before withdrawing permission.

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.<sup>[16]</sup>

4. Pre-hearing Procedure

The purpose of the pre-hearing process is to allow matters at the hearing to be conducted more fairly and economically, since the process should highlight any possible areas of difficulty, which may be resolved before the hearing..

Upon reference of a matter from the Investigating Officer or 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 require the attendance of the Investigating Officer or 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.
- (h) Generally, the pre-hearing process is dealt with by the Monitoring Officer or other suitable officer, though exceptionally matters might be referred to the Committee for decision.

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.

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:

(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 quorate

(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, and the Councillor has indicated the wish to attend the hearing, 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 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. However, Standards Board guidance urges openness and so that hearing should be in public unless there are pressing reasons in favour of a private hearing. When considering whether a hearing should be in public, the Committee is having to comply with the rules on public access to information and has to apply the public interest test ie is the public interest served better by a private hearing rather than a public hearing? It may be that it is in the public interest to exclude the public from part of the hearing eg when sensitive evidence is given.

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?<sup>[20]</sup>

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. <sup>[21]</sup>

(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 Monitoring Officer <sup>[22]</sup> 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.

(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 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. Findings of Standards Committee

The Committee shall make one of the following findings

- (a) that the councillor had not failed to comply with the code of conduct of any authority concerned;
- (b) that the councillor had failed to comply with the code of conduct of an authority concerned but that no action needs to be taken to be taken in respect of the matters at the hearing; or
- (c) that the councillor had failed to comply with the code of conduct of an authority concerned and that a sanction as set out in paragraph 14 below should be imposed.

#### 11. 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) The Standards Committee should state that it finds that there has not been any failure to comply with the Code.
- (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.

12. 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.
- (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.

13. Reference back to the Ethical Standards Officer

If, at any time before the Standards Committee has concluded a hearing, the Standards Committee considers that the matter referred to it by an Ethical Standards Officer requires further investigation by the Ethical Standards Officer, the Standards Committee may request the **Ethical Standards Officer** to resume responsibility for the conduct of the matter, giving its reasons for so doing, and may adjourn the hearing until the Monitoring Officer advises the Standards Committee of the Ethical Standards Officer's response to such a request. In the event that the Ethical Standards Officer directs the Standards Committee to continue to deal with the matter, the Standards Committee shall resume consideration of the matter within 3 months of receipt of the direction or as soon as practicable thereafter and not make any further request to the Ethical Standards Officer.

14. In the event that the Committee makes a finding under paragraph 10 (c) above, then it shall impose any one of, or any combination of, the following sanctions:-

- (a) censure of that councillor;
- (b) restriction for a period not exceeding 6 months of that councillor's access to the premises of the authority or that councillor's use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and do not unduly restrict the persons ability to perform the functions of a councillor;
- (c) partial suspension for a period not exceeding 6 months;
- (d) suspension for a period not exceeding 6 months;
- (e) that the councillor submits a written apology in a form specified by the Standards Committee;
- (f) that the councillor undertakes such training as the Committee specifies;
- (g) that the councillor participates in such conciliation as the Committee specifies;
- (h) partial suspension of the councillor for a period not exceeding 6 months or until such time as the member submits a written apology in a form specified by the Committee;
- (i) partial suspension of the couoncillor for a period not exceeding 6 months or until such time as the councillor has undertaken such training or has participated in such conciliation as the Committee shall specify;

(j) suspension of the councillor for a period not exceeding 6 months or until such time as the councillor has submitted a written apology in a form specified by the Committee;

(k) suspension of the councillor for a period not exceeding 6 months or until such time as that councillor has undertaken such training or has participated in such conciliation as the Committee specifies.

Subject to any suspension of a sanction on appeal, the sanction imposed has immediate effect, unless the Committee directs that one or more of the sanctions imposed be suspended to commence within 6 months of the imposition of the sanction, as the Committee specifies.

15. 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 20 of the Standards Committee (England) Regulations 2008 No.1085.

16. Appeals

The Councillor may appeal against the decision of the Standards Committee by writing to the President of the Adjudication Panel for England, to be received by the President within 21 days of the date of receipt of the written notice of decision under Paragraph 15(c), seeking permission to appeal and, if appropriate, applying to suspend any sanction imposed until such time as the appeal is determined. Any such notice shall specify the finding against which the councillor seeks to appeal, whether it is against the finding of breach and/or the sanction imposed, the grounds for appeal, whether any application for suspension of a sanction is made and whether the councillor consents to the appeal being conducted by way of written representations.

Any such appeal is then governed by the Standards Committee (England) Regulations 2008.

