



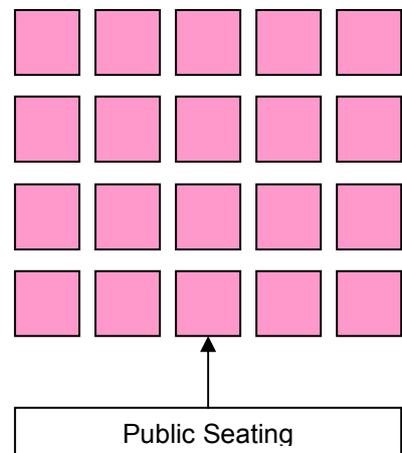
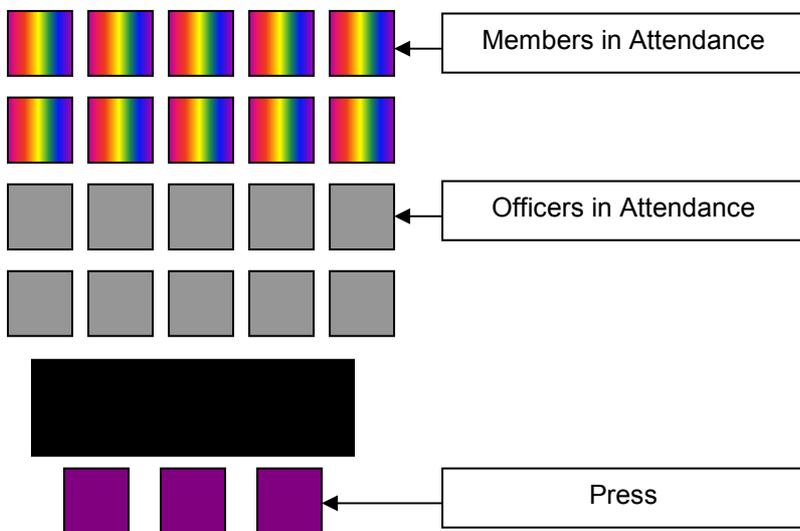
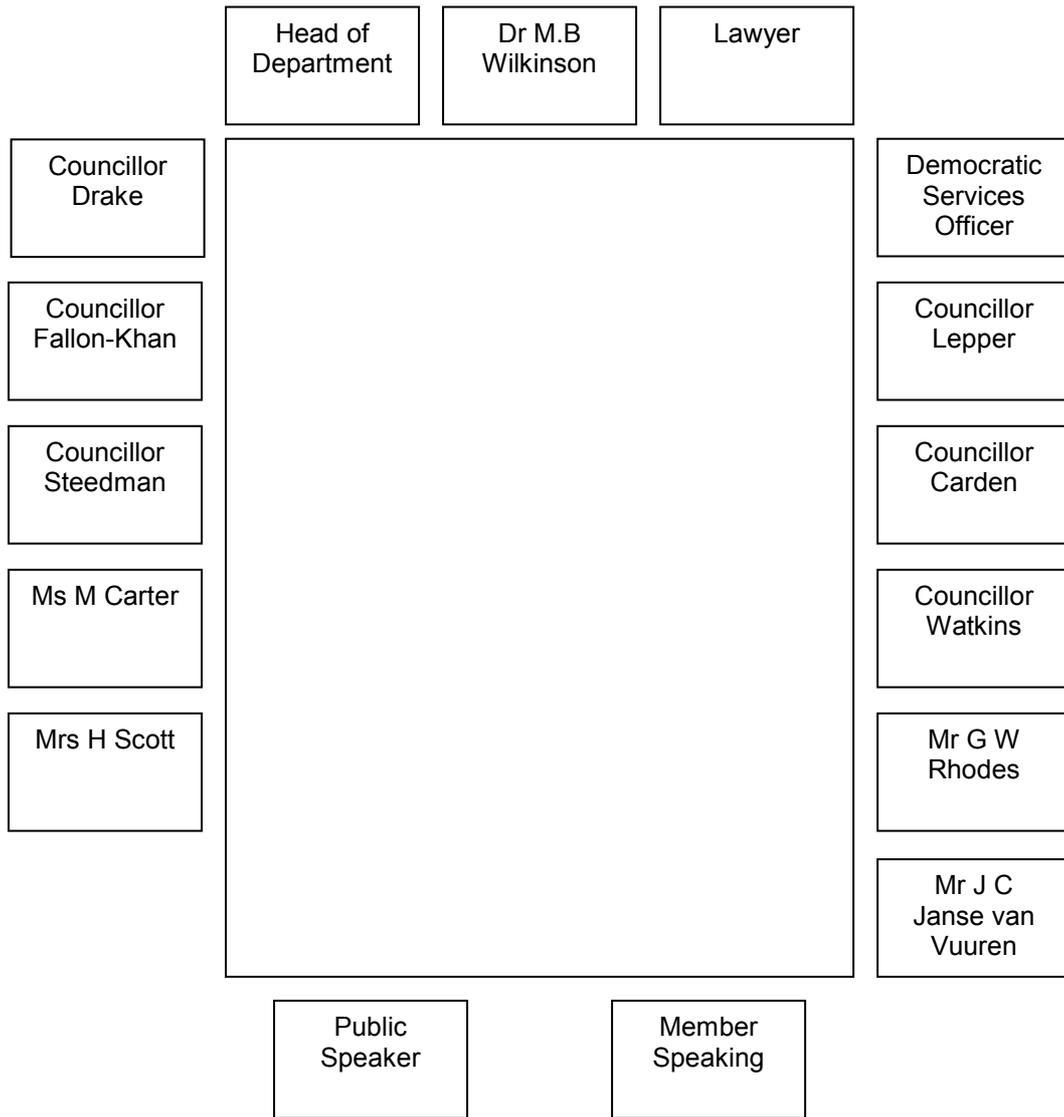
Brighton & Hove
City Council

Standards Committee

Title:	Standards Committee
Date:	11 November 2008
Time:	5.00pm
Venue	Committee Room 1, Hove Town Hall
Members:	Councillors: Carden, Drake, Fallon-Khan, Lepper, Steedman and Watkins Independent Members: Dr M Wilkinson (Chairman), Ms M Carter and Mrs H Scott Rottingdean Parish Council Representatives: Mr J C Janse van Vuuren and Mr G W Rhodes
Contact:	Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

30. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

31. MINUTES OF THE PREVIOUS MEETING

1 - 6

Minutes of the meeting held on 16 September 2008 (copy attached).

32. CHAIRMAN'S COMMUNICATIONS

33. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 3 November 2008).

No public questions received by date of publication.

34. WRITTEN QUESTIONS FROM COUNCILLORS

No written questions received by date of publication.

35. DEPUTATIONS

No deputations have been received by date of publication.

36. PETITIONS

No petitions have been received by date of publication.

STANDARDS COMMITTEE

37. LETTERS FROM COUNCILLORS

No letters have been received by date of publication

38. CORPORATE COMPLAINTS UPDATE

7 - 12

- Report of the Director of Strategy and Governance (copy attached).

Contact Officer: Brian Foley Tel: 29-1229

Wards Affected: All

39. SEVENTH ANNUAL CONFERENCE OF THE STANDARDS COMMITTEE

- Oral report by the Standards and Complaints Manager.

Contact Officer: Brian Foley Tel: 29-1229

Wards Affected: All

40. CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES

13 - 58

- Report of the Director of Strategy and Governance (copy attached).

Contact Officer: Liz Woodley Tel: 29-1509

Wards Affected: All

41. ANNUAL REPORT OF THE STANDARDS COMMITTEE

59 - 72

- Report of the Director of Strategy and Governance (copy attached).

Contact Officer: Liz Woodley Tel: 29-1509

Wards Affected: All

42. REVISED PROCEDURES FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS

73 - 146

- Report of the Director of Strategy and Governance (copy attached).

Contact Officer: Carl Hearsum Tel: 29 -4583

Wards Affected: All

STANDARDS COMMITTEE

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065, email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Monday, 3 November 2008

STANDARDS COMMITTEE	Agenda Item 31 Brighton & Hove City Council
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BRIGHTON & HOVE CITY COUNCIL

STANDARDS COMMITTEE

5.00PM – 16 SEPTEMBER 2008

HOVE TOWN HALL

MINUTES

Present: Councillors:, Drake, Fallon-Khan, Hamilton, Lepper (OS), Randall and Watkins.

Independent Members: Dr M B Wilkinson (Chairman), Mrs H Scott

Rottingdean Parish Council Representative: Mr G Rhodes, Mr Janse vanVuuren

Apologies were received from: Ms M Carter.

PART ONE

ACTION

13. PROCEDURAL BUSINESS

13A. Declarations of Substitutes

13.1 Councillor	Substitute for
Hamilton	Carden
Randall	Steedman

13B. Declarations of Interest

13.2 There were none.

13C. Exclusion of Press and Public

13.3 The Committee considered whether the press and public should be excluded from the meeting during the consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present, there would be disclosure to them of confidential or exempt information as

defined in Schedule 12A, Part 5A, Section 100A(4) or 100 1 of the Local Government Act 1972 (as amended).

- 13.4 **RESOLVED** - That the press and public be not excluded from the meeting.

14. MINUTES OF SPECIAL MEETING

- 14.1 **RESOLVED** – That the minutes of the Special meeting held on 23 May 2008 be approved and signed by the Chairman as a correct record.

15. MINUTES

- 15.1 **RESOLVED** – That the minutes of the meeting held on 10 June 2008 be approved and signed by the Chairman as a correct record .

16. CHAIRMAN'S COMMUNICATIONS

- 16.1 There were none.

17. PUBLIC QUESTIONS

- 17.1 There were none.

18. COMPLAINTS UPDATE

- 18.1 The Committee considered a report detailing complaints received under the new arrangements as defined by the Standards Committee (England) Regulations 2008 which had come into effect on 8 May 2008 (for copy see minute book).
- 18.2 Councillors Watkins and Randall sought clarification regarding the complaints against Councillors referred to. The Standards and Complaints Manager explained that the investigations were complete. Draft reports had been produced and were awaiting responses from complainant and subject Members. The four complaints listed related to very similar complaints from two separate members of the public about two Councillors.
- 18.3 **RESOLVED** - That the content of the report be noted .

19. THE ROLE AND MAKE UP OF THE STANDARDS COMMITTEE

- 19.1 The Committee considered a report of the Director of Strategy and Governance relative to the recent guidance issued by the Standards Board for England (SBE) entitled "The Role and Make up of standards Committees" which applied all local authorities with Standards Committees. The report placed that recently issued guidance before the Committee for information and for comment (for copy see minute book).

On-Going Member Training : Code of Conduct

- 19.2 The Senior Lawyer went through each of the appendices to the main report detailing the changes / proposed changes attendant on the recently issued guidance and sought the Committee's views thereon. The training with Members which had taken place to date was noted. It was also noted that as part of a rolling programme it was envisaged that further training sessions would be arranged during the current municipal year .

Publicity / Advertising

- 19.3 Councillors Randall and Watkins enquired whether as " City News " had a higher circulation in a number of areas of the City than the "Argus" that this could be used in its stead, particularly as advertising costs for using that publication were likely to be lower. The Director of Strategy and Governance explained that guidance regarding the type of publications which could be used was prescriptive, but that where there was the flexibility to do so some material could be migrated to "City News" It was noted that the new arrangements particularly relative to the local determination and initial assessment of complaints had also been extensively advertised on the Council's website with explanatory notes and guidance.

Granting of Dispensations

- 19.4 The Chairman referred to the e. mail sent by the Principal Solicitor prior to his retirement and to the response received from the Standards Board for England (circulated). In his view the advice given was not clear and unequivocal. He considered that the pragmatic and practical approach suggested by the Head of Law be adopted and the Committee were in agreement .

Monitoring of Effectiveness of the Code of Conduct

- 19.5 It was noted that this would continue to form the subject of an annual report of the Monitoring Officer.

Appointments of Additional Members

- 19.6 The Committee agreed that as it was anticipated that a greater number of assessment and hearing panels would now be required that arrangements be made to advertise for new members in light with the extant committee approvals.

Members' Period of Office

- 19.7 Members were in agreement that in future this would need to be staggered to ensure that once appointed a new Member had time to gain experience and grow into their role and the Committee did

not lose all of its experienced members together . Following discussion it was agreed that the period of appointment would be taken as running from the inception of the new legislation in May 2008 and in the case of new Members from their date of appointment .

Appointment of Substitutes to Meetings

19.8 The Chairman stated that he was of the view that in future the appointment of substitutes should not be permitted . To adopt this approach would fall into line with the advice set out in the guidance itself . It would also serve to underline the independent and non political nature of the Committee , which did not need to be politically balanced. There needed to be continuity and consistency in its decision making and Members also needed to build up and apply specialist knowledge in the same way that was required of licensing Committees' and Panels and other quasi judicial functions within the Council . The chairman considered that it was important for that distinction to be made . Members of the Committee were in agreement.

19.9 **RESOLVED** – (1) That the contents of the guidance and officers' comments thereon be noted ; and

(2) That the Committee agree the proposed action points set out in bold italics under each heading of the guidance .

20. STANDARDS BOARD GUIDANCE AFFECTING CHANGES TO THE PROCEDURES FOR LOCAL ASSESSMENT. INVESTIGATION AND DETERMINATION OF COMPLAINTS

20.1 The Committee considered a report of the Director of Strategy and Governance introducing new Standards Board Guidance which would affect the Council's adopted procedures for the local assessment , investigation and determination of complaints about Member conduct, and set out proposals as to how the guidance would be addressed (for copy see minute book).

20.2 **RESOLVED – (1)** That the contents of the report be noted; and

(2) That as an interim measure Members approve the use of East Sussex Fire Authority's adopted procedures for investigation and determination of complaints developed from ACSes best practice and amended to apply to Brighton and Hove City Council.

The meeting concluded at 5.50 pm

Signed

Chairman

Dated this

day of

2008

Subject:	Complaints Update		
Date of Meeting:	11 November 2008		
Report of:	Director of Strategy & Governance		
Contact Officer:	Name: Brian Foley	Tel: 293109	
	E-mail: brian.foley@brighton-hove.gov.uk		
Wards Affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

This paper gives information about:

- 1.1 Complaints regarding Member conduct administered under new arrangements as defined by The Standards Committee (England) Regulations 2008 which came into effect on 08 May 2008.
- 1.2 Complaints dealt with under the corporate complaints procedures.

2. RECOMMENDATIONS:

- 2.1 The Standards Committee is asked to note the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Standard Committee (England) Regulations 2008 are derived from the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007. The regulations set out a framework for the operation of a locally based system for assessment, referral, investigation and hearing of complaints of member misconduct.
- 3.2 This paper summarises complaints dealt with under these regulations.
- 3.3 The Local Government Act 2000 requires the names of complainants and of Members about whom allegations have been made to be kept confidential.

3.4 **Summary of complaints about member conduct**

Complaints previously reported to Standards Committee

- 3.5 The Complaints Update Report to Standards Committee of 16 September 2008 gave details of 4 complaints to be dealt with under the new Standards Committee (England) Regulations 2008. The outcomes of those complaints were:

Case Number **SCT047STDS**

Complainant: Member of the public

Date of complaint: 08 July 2008

Date of Assessment Panel : 14 August 2008

Allegation:

The complaints relate to representations made to the Planning Applications Sub-Committee. The complaint alleges the member has breached section 6(a) that *you must not use or attempt to use your position as a Member improperly to confer on, or secure for yourself or any other person an advantage or disadvantage*, and section 12(1), that *the member had a prejudicial interest in any business of the authority and failed to withdraw from the room or chamber where a meeting considering the business was being held.*

Decision of Assessment Panel:

Complaint to be investigated

Outcome:

Complaint withdrawn

Case Number **SCT048STDS**

Complainant: Member of the public

Date of complaint: 20 July 2008

Date of Assessment Panel : 14 August 2008

Date of Determination: 24 October 2008

Allegation:

The complaints relate to representations made to the Planning Applications Sub-Committee. The complaint alleges the member has breached section 6(a) that *you must not use or attempt to use your position as a Member improperly to confer on, or secure for yourself or any other person an advantage or disadvantage*, and section 12(1), that *the member had a prejudicial interest in any business of the authority and failed to withdraw from the room or chamber where a meeting considering the business was being held.*

Decision of Assessment Panel:

Complaint to be investigated

Outcome:

A Standards Committee Panel considered the Report of the Investigator appointed by the Monitoring Officer. The Panel agreed with the findings

within the Report and concluded there had been no breach of the code of conduct.

Case Number **SCT049STDS**

Complainant: Member of the public

Date of complaint: 08 July 2008

Date of Assessment Panel : 14 August 2008

Allegation:

The complaints relate to a decision made by a Planning Applications Sub-Committee. The complaint alleges the member has breached sections 8(2)(a), 9(1), 10(1), and 12(1) of the Code of Conduct in that there was a personal and prejudicial interest which the member failed to declare and to withdraw from the room or chamber where the business of the meeting was being considered.

Decision of Assessment Panel:

An element of the complaint to be investigated

Outcome:

Complaint withdrawn

Case Number **SCT050STDS**

Complainant: Member of the public

Date of complaint: 08 July 2008

Date of Assessment Panel : 14 August 2008

Date of Determination: 24 October 2008

Allegation:

The complaints relate to a decision made by a Planning Applications Sub-Committee. The complaint alleges the member has breached sections 8(2)(a), 9(1), 10(1), and 12(1) of the Code of Conduct in that there was a personal and prejudicial interest which the member failed to declare and to withdraw from the room or chamber where the business of the meeting was being considered.

Decision of Assessment Panel:

An elements of the complaint to be investigated

Outcome: A Standards Committee Panel considered the Report of the Investigator appointed by the Monitoring Officer. The Panel agreed with the findings within the Report and concluded there had been no breach of the code of conduct.

3.6 New complaints not previously reported to Standards Committee

Case Number **SCT052STDS**

Complainant: An Elected Member

Date of complaint: 12 September 2008

Date of Assessment Panel : 21 October 2008

Allegation:

It is alleged that the Subject Member has breached Section 5 of the Code of Conduct which states 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'

Decision of the Assessment Panel:

The Assessment Panel decided that no action should be taken in respect of the complaint.

Case Number **SCT053STDS**

Complainant: Member of the public

Date of complaint: 16 September 2008

Date of Assessment Panel : 21 October 2008

Allegation:

It is alleged that the Subject Member has breached Section 5 of the Code of Conduct which states 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

It is further alleged that the Subject Member has a prejudicial interest in the matter and should therefore not make a public judgement on a planning application yet to be submitted or registered.

Decision of the Assessment Panel:

The Assessment Panel decided that no action should be taken in respect of the complaint.

3.7 Summary of complaints received under the corporate complaints procedures

Local Government Ombudsman Complaints

In the first half of 2008/09 there have been 69 complaints received by the Ombudsman compared to 77 in the same period of last year. There were 6 cases resolved by Local Settlement. This resulted in total payments to complainants of £1750. There were 26 findings of No Maladministration. The remaining complaints were either closed at the Ombudsman's Discretion, were Outside the LGO's Jurisdiction or were Premature.

The services receiving most complaints from the Ombudsman were Schools Admissions (8), Development Control (8), Housing Estate Management (7), Repairs and Maintenance (6) and Housing Allocations (6).

Stage Two Complaints

In the first half of 2008/09 there have been 59 requests for Stage Two Investigations compared to 88 in the same period of last year. Compensation payments totalled £500.

The services receiving most complaints at Stage Two were Development Control (8), Housing Car Parks and Garages (8), Repairs and Maintenance (6), Parking Management (4).

Stage One Complaints

In the first half of 2008/09 there have been 908 complaints at Stage One compared to 986 in the same period of last year. Compensation payments totalled £100.

The services receiving most complaints at Stage One were Repairs and Maintenance (101), Parking Management (70), Development Control (62), Refuse Collection(60), Transport planning (55), Housing estate management (45), Revenues (42), and Housing Benefits (34).

4. CONSULTATION

4.1 There has been no consultation

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 There are no financial implications

Finance Officer Consulted:

Date:

Legal Implications:

5.2 There are no legal implications

Lawyer Consulted:

Date:

Equalities Implications:

5.3 There are no equalities implications

Sustainability Implications:

5.4 There are no sustainability implications

Crime & Disorder Implications:

5.5 There are no crime and disorder implications

Risk and Opportunity Management Implications:

5.6 There are no Risk and Opportunity management Implications

Corporate / Citywide Implications:

5.7 There are no Corporate or Citywide implications

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. None

Subject:	Codes of Conduct for local authority members and employees		
Date of Meeting:	11 November 2008		
Report of:	Director of Strategy & Governance		
Contact Officer:	Name:	Liz Woodley	Tel: 291509
	E-mail:	liz.woodley@brighton-hove.gov.uk	
Wards Affected:	All		

FOR GENERAL RELEASE.**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report brings to the Committee's attention a recent consultation paper, "Communities in control: Real people, real power Codes of conduct for local authority members and employees" issued by CLG on revisions to the model code of conduct for members and the introduction of a model code for officers. The report outlines the key issues contained in the paper, and suggests potential responses to the questions posed therein.

2. RECOMMENDATIONS:

- 2.1 (1) That members note the proposed changes to the Code of Conduct and the provisions of the draft local model code for local authority employees.
- 2.2 (2) That the monitoring officer be instructed to respond to the consultation paper with the comments as set out in the report, together with any further comments the Committee may make.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The White Paper, "Communities in control: Real people, real power" was about passing power into the hands of local communities. The paper, "Communities in control: Real people, real power Codes of Conduct for local authority members and employees" is the next in a series consulting on a number of policy commitments. It invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. It also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which

sets out the general principles which govern the conduct of local authority members. Finally it seeks comments on proposals to incorporate a code of conduct for employees, based on the model code of conduct, into the terms and conditions of employment of their employees (“the employees’ code”).

- 3.2 The paper, which was published on 1 October 2008 is attached as Appendix 1 to the report. The deadline for responding to the paper is 24 December 2008.
- 3.3 Subject to the responses to the consultation, the Government has indicated that it is minded to implement the proposals in the consultation paper so that they come into effect in line with the 2009 local government elections.
- 3.4 The Standards Board for England has welcomed the proposed changes.
- 3.5 The report outlines the key issues contained in the paper, and suggests a potential response.

Application of the code to member’s conduct in their non-official capacity

Members should inspire trust and confidence in those who elected them. Poor behaviour can adversely affect that trust. It is appropriate that the members’ code be extended to apply to members acting in their non-official capacity, as long as the term “non-official” is carefully defined.

Definitions of “criminal offence” and “official capacity”

The proposed definition of criminal offence, “any criminal offence for which the member has been convicted in a criminal court” seems to serve its purpose. However, there is no discussion in the paper of whether civil infringements, comparable to a criminal conviction, should be covered by the new code. The making of an Anti-social behaviour order (ASBO) against a member would not be covered, even though the behaviour necessary to justify the making of the ASBO would be likely to bring the member’s office or authority into disrepute. For an ASBO to be made, the person concerned must have acted in an anti-social manner, that is to say, in a manner that has caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself (Section 1 (1) (a), Crime and Disorder Act 1998)

With regard to the proposal to exclude offences capable of attracting fixed penalty notices, such offences may be relevant when considering a particular member’s role. A series of fixed penalty notices for parking and motoring offences may be of more concern to the Cabinet member for Environment, rather than the Cabinet Member for Adult Social Care & Housing.

The imposition of a caution is not a matter of public record. Sanctions against a member for accepting a caution run the risk of making a private matter public.

If consideration is to be given to including cautions, the term police caution should be avoided, unless it is proposed to limit it to cautions imposed by the Police. The term police caution is not a term with which the Council is familiar. It recognises simple cautions and conditional cautions, in accordance with Home Office Circular 30/2005, the Cautioning of Adult Offenders. It should also be noted that other enforcement bodies use cautions. For example, the Council uses them for Housing Benefit offences, which action is compatible with DWP guidance.

The proposed “official capacity” definition appears clumsy.

Offending abroad

It seems right that a conviction abroad should only be considered where the same behaviour would amount to a criminal offence in the UK.

Conduct regime

It is proposed that investigations into allegations of misconduct should automatically be put on hold where the allegation involves a criminal activity which at the time the allegation is made is being investigated by the police or prosecuted through the courts. This approach is inconsistent with current Standards Board guidance on deferring investigations. That proposes that investigation should normally be deferred where there are other proceedings pending, but where the investigation will not prejudice the police investigation or court case, the investigation can proceed.

In cases involving a member’s honesty, integrity or conduct which has a bearing on the discharge of their official duties, a precautionary suspension, akin to that used for employees could be considered.

Proposed revision to the members’ code

The proposed revisions to the Code are pedantic, but otherwise unobjectionable. Paragraph 12 (2) already applies to Rottingdean Parish Council. While the Code is being reviewed, consideration could be given to revising (upwards) the £25 limit. The current level means that the most of the functions attended by the Mayor have to be registered.

Time limit for giving undertaking to observe new code

It is proposed that a member would have two months for the adoption of the new code to give an undertaking to abide by it. Two months has proved adequate in the past, and there is no obvious reason why it would not in the future.

New general principle

A duty to uphold the law is not a principle, but rather a requirement.

Mandatory code for employees.

This is to be welcomed as it establishes a stronger national local government professional identity and gives the public confidence that there is a minimum standard of conduct for local members and public servants.

All employees?

The code should apply to all local public servants regardless of professional codes. Professional codes by their nature are likely to speak to a certain area of conduct. A basic base employee code should apply to all particularly in regard to honesty integrity, relationships with politicians and dignity and respect at work. There may also be an advantage in the strengthening of equality and diversity elements of the employees' code as they may not have appropriate emphasis in other professional codes.

Core values

There is insufficient emphasis on treating colleagues, customers and members with dignity and respect. Does the code not need to mirror that of members in having a section on conduct when not officially in role?

Qualifying employees

The model should be based on delegation, covering those already politically restricted but also some more junior officers who have visible and important roles, for example those closely supporting democratic structures or as the most senior representative of the council in a community setting.

Registration of interests

Employee interests should be publicly registered.

4. CONSULTATION

- 4.1 The Assistant Director, Head of Human Resources has been consulted. His views have been incorporated into the report.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are none.

Finance Officer Consulted:

Date:

5.2 Legal Implications:

Section 82 of the Local Government Act 2000 allows the Secretary of State to issue a code of conduct for local authority employees in England, after consulting local authority representatives, the Audit Commission and Commission for Local Administration in England.

Lawyer Consulted: Liz Woodley

Date: 27 October 2008

5.3 Equalities Implications:

There are none.

5.4 Sustainability Implications:

There are none.

5.5 Crime & Disorder Implications:

There are none.

5.6 Risk and Opportunity Management Implications:

There are none.

5.7 Corporate / Citywide Implications:

There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. Communities and Local Government Paper. "Communities in control: Real people, real power Codes of Conduct for local authority members and employees"

Documents In Members' Rooms

1. None
- 2.

Background Documents

1. None
- 2.

Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation

October 2008

Department for Communities and Local Government: London

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Bressenden Place
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Chapter 1: The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments. Future consultation papers include a consultation on proposals to revise the code of recommended practice on local authority publicity, which is due to be published at the end of October. This paper invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. This paper also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which sets out the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees' ("the employees' code").

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May

2007, on the basis that the provisions of the members' code would be reviewed in light of early experience of its practical operation.

- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members' code in its application to members' conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members' code, including reconfiguring the members' code into two distinct sections, the first dealing with members' conduct in their official capacity, the second dealing with members' conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members' conduct in their non-official capacity.
- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

Who are we consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from local authority members, local authority monitoring officers, local government employees, national representative bodies, local government partners and trade unions. **The consultation period runs for 12 weeks to 24 December 2008.**

How to respond

- 1.11 Your response must be received by 24 December 2008 and may be sent by e-mail or post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

e-mail: conductcode@communities.gsi.gov.uk

If you are replying by e-mail please title your response 'Response to Model Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will form the revised members' code, the general principles order and the new employees' code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see **Annex C** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.
- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in

relation to the application of the conduct regime to the conduct of members in their non- official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

Code of conduct for local government employees

- 1.24 In August 2004, the then Office of the Deputy Prime Minister issued the consultation paper, *A Model Code of Conduct for Local Government Employees*. The paper consulted on a draft code defining the minimum standards of conduct that employees of relevant authorities would be expected to observe on carrying out their duties. The 2004 consultation was followed by further inquiries and consultations on matters relating to the conduct regime for local government.
- 1.25 The Department restated its commitment to introduce a model employees' code, under Section 82 of the Local Government Act 2000, in the local government White Paper 2006. However, in light of the above inquiries and consultations, and the introduction of the 2007 members' code, it was decided that the implementation of an employees' code should be delayed until the Department had an opportunity to consider the employees' code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new members' code.
- 1.26 With the implementation of the new devolved conduct regime and our proposals to amend the members' code, drawing on the experience of its first year of operation, we consider that the time is right to also consult on proposals to introduce a model employees' code.

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.
- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Consultation Question 1:

Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

Definition of ‘criminal offence’ and ‘official capacity’

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members’ code, what constitutes a ‘criminal offence’. We propose for the purpose of the members’ code, that ‘criminal offence’ be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members’ code. However, serious criminal offences which we consider should come under the remit of the members’ code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

Consultation Question 2:

Do you agree with this definition of ‘criminal offence’ for the purpose of the members’ code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

- 2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members’ code, what constitutes ‘official capacity’.
- 2.14 We propose that for the purposes of the members’ code, ‘official capacity’ be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.

Consultation Question 3:

Do you agree with this definition of ‘official capacity’ for the purpose of the members’ code? If not, what other definition would you support? Please give details.

Offending abroad

2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

Consultation Question 4:

Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

What does this mean?

2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.

2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

The conduct regime

2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.

2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the

Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

- 2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

Consultation Question 5:

Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Proposed revisions to the members' code

- 2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.
- 2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at www.standardsboard.gov.uk

Parish councils

- 2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

Membership of other bodies

- 2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

Personal interests

2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

Prejudicial interests

2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.

2.28 It has been suggested that the meaning of 'determining' in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.

2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

Registration of members' interests

2.30 We propose that any new members' code would take into account any existing registration of members' interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members' code is introduced.

Consultation Question 6:

Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

Consultation Question 7:

Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

Consultation Question 8:

Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

Consultation Question 9:

Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Proposed amendments to the General Principles

What are the General Principles?

- 2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.
- 2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

The General Principles

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in a situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in a non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.

Consultation Question 10:

Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

Consultation Question 11:

Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

2.40 We propose that for the purposes of the revised General Principles Order, 'official capacity' be defined as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority".

Consultation Question 12:

Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in an non-official capacity.

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

- 3.1 A code of conduct for local government employees ("employees' code") should provide the staff of an authority with an effective ethical framework within which to work and it should give that authority's citizens confidence that an authority's staff are working on their behalf in an appropriate manner.

Consultation Question 13:

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority's scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything

from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority's discipline procedures.

- 3.5 It is not intended that the employees' code be a burden on authorities or employees. The code should not constrain an authority's ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees' code in order to provide their staff with an effective ethical framework within which to work.

Application of the employees' code

- 3.6 We propose that the employees' code would apply to all relevant authorities and police authorities in Wales, as defined in Section 49 of the Local Government Act 2000. We are proposing that a model employees' code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees' terms and conditions of employment.
- 3.7 However, we do not propose to apply the employees' code where it is not needed, for instance to employees in professions that are covered by their own code of conduct; firefighters, teachers, community support officers, solicitors etc.

Consultation Question 14:

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Consultation Question 15:

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

- 3.8 We propose a two-tier model. The first tier, drawing on the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, will apply equally to all authority employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier, drawing on the members' code, will apply to 'qualifying employees', that is; either senior officials or those officials carrying out delegated functions.
- 3.9 With the members' code in place, and members having to abide by that code, there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to

do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

Consultation Question 16:

Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

Beyond the core values

Who are the 'qualifying employees'?

- 3.10 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the restrictions and expectations of the members' code should apply.
- 3.11 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders. Certain posts would be designated as qualifying employees.
- 3.12 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected members under section 101 of the Local Government Act 1972.

Consultation Question 17:

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

Using your position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.

Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees' code applies, the qualifying employee must have regard to this advice.

Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the authority's monitoring officer or, in the case of a parish council, through the parish clerk.

The registration of interests protects the qualifying employee by giving early warning of any possible areas of conflict of interest and provides assurance to the public that the qualifying employee is acting transparently. Only registration of personal interests in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the authority are required.

These are:

- Your membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
- Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
- Any contracts between the authority and any company you have an interest in, as above.
- Any land or property in the authority's area in which you have a beneficial interest.

A qualifying employee may seek to exempt their personal interests from the register of interests if they consider, for instance that having this information on record might put themselves or others at risk. In such cases, the qualifying employee should discuss the matter with their monitoring officer.

Consultation Question 18:

Should the code contain a requirement for qualifying employees to publicly register any interests?

Consultation Question 19:

Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.

Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear.

Consultation Question 20:

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

Consultation Question 21:

Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Contractors, partners and part time staff

3.13 Local authorities have an increasingly complex relationship with the private sector in its work with contractors, partners and part time staff. We consider that rather than attempt to determine centrally when and when not to apply the employees' code not just to local government employees, but those working on behalf of local government, it will be for local authorities themselves to decide, in agreeing contracts, partnership agreements or terms and conditions of employment, if and how the employees' code, in whole or in part, should apply.

Parish councils

3.14 The members' code applies to parish councillors as well as members of larger authorities, and it seems reasonable therefore for the ethical framework of the employees' code to apply to parish council employees. We recognise that the environment that parish councillors operate within is different to that of larger authorities and are conscious that what is consider to be a reasonable expectation in the employees' code for larger councils, may prove to be difficult for parish councils.

3.15 That being the case, we would welcome responses from parish councils on any particular aspect of the employees' code that might present difficulties and how those difficulties could be overcome.

Consultation Question 22:

Should the employees' code extend to employees of parish councils?

Legislative context

3.16 Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be deemed to be incorporated in employees' terms and conditions of employment.

Annex A: List of consultation questions

Chapter 2: Code of conduct for local authority members

- Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
- Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.
- Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.
- Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?
- Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?
- Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?
- Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.
- Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?
- Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Chapter 3 Model Code of Conduct for local authority employees

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?
- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?
- Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?
- Question 22 Should the employees' code extend to employees of parish councils?

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a

firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests,

you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority’s standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members’ Interests

Registration of members’ interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority’s register of members’ interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority’s monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority’s monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority’s monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annex C: Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
 - 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at: www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

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STANDARDS COMMITTEE

Agenda Item

Brighton & Hove City Council

Subject: Annual report of the Standards Committee
Date of Meeting: 11 November 2008
Report of: Director of Strategy & Governance
Contact Officer: Name: **Liz Woodley** Tel: **291509**
E-mail: liz.woodley@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Section 3 of this report summarises the main ethical requirements of the Local Government Act 2000, and shows how the council has complied over the period of 14 months since the previous report of September 2007.
- 1.2 Section 3.13 of the report details the Monitoring Officer arrangements.
- 1.3 An overall assessment is given at 3.20

2. RECOMMENDATIONS:

- 2.1 That the Committee reviews the period September 2007 to October 2008 and advises of any action it wishes to be taken.
- 2.2 That the Chair presents the report to Council.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 Membership & Reports to the Standards Committee

The membership of the committee during this period has been as follows:-

3 Independent persons:- Ms M Carter, Mrs H Scott, Dr M B Wilkinson;
2 Rottingdean Parish Council representatives:- Parish Councillor Mr G Rhodes throughout the period, and from March 2008, Parish Councillor Mr Janse van Vuuren.

[The 3 independent persons and Parish Council representatives are collectively described in this report as Independent Members]

2 Conservative Members:- Councillors Drake & Simson until May 2008 then Councillors Drake and Fallas-Khan;

1 Green Member:- Councillor Roy in September 2007, Councillor Taylor until January 2008, Councillor Kennedy in March, Councillor Kitcat in May 2008 then Councillor Steedman

2 Labour Members:- Councillors Lepper and Carden

1 Liberal Democrat Member:- Councillor Watkins.

The Chairman throughout has been Dr. Wilkinson. The Deputy Chair was Councillor Drake. However, at its meeting on 10 June 2008, the Committee agreed that the position of Deputy Chair remain vacant, with one of the independent Members deputising in the event of the Chairman being unavailable. The Opposition Spokesperson was Councillor Lepper.

There have been 7 meetings of the full Standards Committee since September 2007, including the meeting on 18 September. The following matters have been considered:-

18 September 2007

Received report on Member complaints and service complaints.

Noted arrangements for Member training on the new Code of Conduct.

Approved the delegation of dispensation applications to the Hearing Panel.

Approved draft Guidance for Members regarding Newsletters and other publications.

Considered Annual report of the Standards Committee for the period September 2006 to September 2007

6 November 2007

Received reports on Member complaints and service complaints.

Noted a report on the 6th Annual Assembly of Standards Committees held in Birmingham on 15 & 16 October 2007;

Noted an update report on the introduction of the new local Code of Conduct

Noted a report on the key findings of the CIPFA/SOLACE (chartered Institute of Public Finance and Accountancy and Society of Local Authority Chief Executives and Senior managers) report on Delivering Good Governance in Local Government.

Approved revised Whistleblowing policy.

8 January 2008

Received reports on Member complaints and service complaints.

Considered draft Code of Corporate Governance and recommended adoption of the Code to Council

Approved delegation to Rottingdean Members' Hearing Panel of dispensation applications

Recommended to Council the appointment of a fourth independent person and second Rottingdean Parish Council representative to serve on the Committee.

Recommended to full Council a revised Code of Conduct, based on the national model code, to come into effect on 15 May 2008

Considered report of the Working Group on the implementation of the Local Government and Public Involvement in Health Act 2007

Noted a report concerning an investigation into a breach of confidentiality

Noted confidential minutes of Standards Hearing Panel held 14 December 2007

18 March 2008

Considered report of the working Group examining the implementation of the Local Government and Public Involvement in Health Act 2007.

23 May 2008 (special meeting)

Approved arrangements and procedures for dealing with ethical standards complaints against Members and authorised the Director of Strategy and Governance i) to make any necessary amendments, and ii) to appoint independent members to the Standards Committee for dealing with individual complaints, from independent persons who serve on other authorities' Standards Committees

10 June 2008

Received report on Member complaints and service complaints.

Noted report about the Council's new constitution and the provisions in it relating to the Standards Committee

Noted report on actions taken to revise the local Code of Conduct for Members

Noted and agreed proposed training initiatives for 2008/09

16 September 2008

Received report on Member complaints and service complaints.

Noted report concerning Standards Board guidance on "the Role and Make up of Standards Committees"

Noted that the Council's adopted procedures for local assessment, investigation and determination were in need of updating in light of legislative changes and Standards Board guidance. As an interim measure, the use of East Sussex Fire Authority's procedures for investigation and determination was approved.

3.2 **The Local Government and Public Involvement in Health Act 2007**

The Local Government and Public Involvement in Health Act has had a major impact on the ethical standards regime. The main provisions of the Act that affect this regime are:-

(a) New Powers for Standards Committees

Since 8 May 2008, **all** allegations of breaches of the code about Brighton & Hove or Rottingdean Parish Members are referred to the Council's Standards Committee, not the Standards Board. Officers need to bring each complaint before an Assessment Panel of Members which has 3 main options:-

- (i) To refer the matter to the Monitoring Officer for investigation, or
- (ii) To refer the matter to the Standards Board, to deal with it under existing procedures; or
- (iii) To take no action.

An Assessment Review Panel can review any decisions if the complainant so requests.

(b) Revised Role of the Standards Board

Under the new arrangements, the role of the Standards Board changed from investigation of complaints to strategic regulation. It has a number of specific roles including:-

- (i) Issuing statutory and other guidance to local authorities;
- (ii) Requiring standards committees to report to the Standards Board in the performance of their duties;
- (iii) Suspending the powers of any Standards Committee to deal with complaints if it considers that performance is inadequate. If this happens, the Board can either deal with complaints itself or arrange for complaints to be dealt with by another authority.

3.3 **Sub-Committees of the Standards Committee**

Until 7 May 2008, the Committee had two Sub-committees, known as the Hearing Panels. They had been constituted to deal with any allegations of breaches of the local Code of Conduct for Members which had been referred by the Standards Board to the Council for determination.

The Panel which dealt with cases relating to the Council comprised three Independent Members (excluding the Parish Council representative) and two Councillors. The Panel which dealt with cases relating to Rottingdean Parish Council had the same membership except that one of the Councillors was replaced by the Parish Representative. Normally only 3 of the Panel would

actually be asked to attend any meeting, the ideal balance being 2 Independent Members and either one Councillor or the Parish representative as appropriate.

There was one meeting of the Hearing Panel during the period September 2007 to May 2008- on 14 December 2007. Further details are given in section 3.9 (Complaints to the Standards Board) below.

Since 8 May 2008, the Committee has had 3 Sub-Committees, known as the Assessment Panel, Assessment Review Panel and the Hearing Panel. The Assessment Panel has met twice, on 14 August 2008 to consider 4 complaints, and on 21 October to consider 2 complaints.

The Hearing Panel has met once, on 24 October 2008 to consider the 4 complaints referred to above.

3.4 Undertakings to Comply with the Council's Code of Conduct

The requirement to sign a declaration indicating willingness to observe the Council's local Code of Conduct came into effect in 2002. By virtue of section 52 (3) of the Local Government Act 2000, it is unlawful for any Member (including the Independent Members as defined above and any other co-optees with voting rights) to participate in the business of the Council without having signed the undertaking.

All Members of the Council have signed the declaration.

The Independent Members serving on the Standards Committee were appointed in February 2000 (Dr Wilkinson), August 2001 (Ms Carter) April 2002 (Mr Rhodes), October 2003 (Mrs Scott) and March 2008 (Mr Janse van Vuuren). All signed their undertakings before the first relevant meeting attended by them after their appointments.

The signed undertakings will be available at the meeting for inspection by the Standards Committee.

3.5 Register of Members' Interests

All Members (including Independent Members and co-optees with voting rights) are obliged to make declarations of interests in accordance with the requirements in the Council's local Code of Conduct.

All Members, (including Independent Members and co-optees with voting rights) made new declarations of interests in accordance with the

requirements of the Council's newly adopted local Code of Conduct which came into effect on 30 September 2007.

The Register will be available for inspection at the meeting.

3.6 Notification of Gifts and Hospitality Received

Until the new Code of Conduct came into force at the end of September 2007, there was a requirement for any Member (including Independent Members and co-optees with voting rights) who had received any gift or hospitality over the value of £25 in connection with membership of the Council to so declare in writing to the Monitoring Officer and a form was made available to Members for this purpose. Declarations were kept in a register.

The register is no longer required to be kept as a separate register. Under the new Code of Conduct gifts and hospitality have to be registered on the main public register.

3.7 Applications for Dispensation

In very limited circumstances, Members can apply in writing to the Standards Committee for dispensations to take part in business that they would otherwise have been unable to participate in through having prejudicial interests.

In the period between the last report in September 2007 to date, there have been no applications for dispensations.

All dispensations are entered on the register of Members' interests and remain there for the appropriate period, normally for 4 years from the date on which they were granted, or (if shorter) until the date fixed by the Committee granting the dispensation.

The dispensations will be available as part of the register of interests for inspection by the Standards Committee at the meeting.

3.8 Politically Restricted Posts – Exemptions

Under the Local Government and Housing Act 1989 anyone who holds a "politically restricted post" in a local authority is unable to be a local Councillor, MP, MEP or Regional Assembly Member and must not take part in certain political activity, such as canvassing and serving as an officer of a political party. Restricted posts include the Chief Executive, Chief and Deputy Chief Officers, Monitoring Officers, those paid above a certain level and those who regularly brief the media on behalf of the authority. It is possible to claim

exemption from the restrictions. Until May 2008, this was done by applying to the Adjudicator. The function of granting exemptions has now transferred to the Standards Committee. During the period covered by this report, there have been no applications for exemption. This additional power is unlikely to have any significant impact on the Committee's workload, as nationally there have been few applications to the Adjudicator.

3.9 Complaints to the Standards Board

Until 7 May 2008 complaints about any failure by any Member to observe the local Code of Conduct were made to the Standards Board. Such complaints could either be rejected as outside the terms of reference of the complaint system, or referred for investigation. Investigations could either be centrally conducted or sent to the authority concerned for investigation. After investigation, if a case to answer was identified, the complaint was either determined centrally or locally.

In the period 19 September 2007 to 7 May 2008, there was only one new complaint made to the Standards Board. It was made on 4 April 2008, and rejected without investigation the same day. On 14 December 2007 the Hearing Panel met to consider a June 2007 complaint which had been referred by the Standards Board for local investigation and determination. The Panel accepted the Investigator's view that there had been no breach of the Code of Conduct which applied at the date of the incident complained of. The above information has been taken from the regular "Corporate Complaints Update" reports to Committee.

During the period in question, the SBE finally concluded a case which had been deferred pending the outcome of legal proceedings. The Ethical Standards Officer concluded that it was not an appropriate use of public resources to take further action.

3.10 Complaints to the Council

On 8 May 2008, the Standards Committee (England) Regulations came into force, and inter alia, transferred responsibility for the receipt of complaints moved from the Standards Board to the Council.

Since that date, there have been 6 complaints to the Council about Member Conduct.

3.11 Training

The Sixth Annual Assembly of Standards Committees, at Birmingham took place on 16 and 17 October 2007. It was attended on behalf of Brighton &

Hove City Council by the Chair and the Standards and Complaints Manager. Another Member of the Standards Committee, Melanie Carter and the Principal Solicitor Governance also attended on behalf of East Sussex Fire Authority. A report was made to the November 2007 meeting of the Standards Committee.

The Seventh Annual Assembly of Standards Committees, at Birmingham took place on 13 and 14 October 2008. It was attended on behalf of Brighton & Hove City Council by the Chair, the Standards and Complaints Manager and Councillor Steedman. The Senior Lawyer also attended on behalf of the East Sussex Fire Authority. A report is on the agenda for the meeting.

3.12 Issues for the future

Codes of Conduct for local government employees?

In August 2004 the Government consulted on a possible Code of Conduct for local government employees, which it had power to prescribe under the Local Government Act 2000. Implementation was delayed until the relevant department had an opportunity to consider the Code in the context of the wider review of the conduct regime for local government, and the lessons learned from the implementation of the new member code.

With the implementation of the new devolved conduct regime, and proposals to amend the Members' Code, the Government considers that the time is right to also consult on proposals to introduce a model employees' code. Accordingly it has now issued a White paper, "Communities in control: Real people, real power. Codes of Conduct for Members and Employees". The closing date for responses is 24 December 2008.

Code of Conduct and private life

The 2002 national model Code of Conduct applied to Members when they were acting in their official capacity, although it did include some provisions which applied when they were acting in their private capacity. In the Livingstone case, the High Court held that the Code of Conduct only applied when Members were acting in their official capacity as the legislation on which it was based did not enable it to have wider coverage. The 2007 Act gave the Secretary of State powers which could reverse the effect of the High Court decision. The Government has recently issued a consultation paper, (Communities in Control: Real People, real power. Codes of conduct for Members and Employees) on possible revisions to the model code, principally to clarify its application to members' conduct in their non-official capacity

3.13 The Monitoring Officer Functions

General:- The functions of the Monitoring Officer derive from statute, namely section 5 of the Local Government and Housing Act 1989 and the Local Government Act 2000. These are supplemented by the Council's scheme of Delegation to Officers, various codes and protocols contained in part 9 of the Council constitution, as well as custom and practice. Broadly, these roles can be described as covering legality, probity and good governance / administration. On 23 March 2003, it was agreed that the Monitoring Officer should submit an annual report to the Standards Committee on the performance of these functions and the adequacy of the arrangements.

Adequacy of Resources and Officer Arrangements

The Director of Strategy & Governance is the Monitoring Officer. The Council is obliged to provide him in his role as Monitoring Officer with the necessary resources to enable him to discharge his functions.

He has appointed as Deputy Monitoring Officer the Head of Law and is also supported by a number of lawyers (who attend Cabinet, Cabinet member meetings and committees and provide legal and probity advice) the Standards and Complaints Team (which deals with allegations of maladministration by any part of the Council and any ethical standards complaints about Members) as well as Committee Administrators (who maintain the register of Members' interests and record declarations of interest at meetings.) All these staff are within his own department.

The Council's Internal Audit undertakes an audit of corporate governance from time to time and supports the Monitoring Officer by identifying any issues and suggesting steps for improvement.

These arrangements, taken together, provide the necessary expertise and resources for the effective discharge of the Monitoring Officer's functions.

In February 2008, the Audit Commission issued its Annual Audit and Inspection Letter. It was considered by the Policy and Resources on 6 March 2008. the council was rated as three-star under the 2007 Comprehensive Performance Assessment (CPA) framework. Its annual direction of travel was assessed as "improving well."

There were no comments in the Annual Audit and Inspection report dealing directly with complaints handling or other ethical issues.

3.14 **The Member Structure for dealing with Standards**

The ethical standards work in the Council is led and co-ordinated by the Standards Committee, consisting of the 11 Members listed at Section 3.1 of this report.

The Council has been successful in attracting 5 high calibre Independent Members. One of these is the Chair of the Committee.

3.15 **Procedures for dealing with local investigations and local determinations of ethical complaints**

The Council has adopted a procedure for the local assessment of complaints and interim procedures for the investigation and the determination of complaints. The investigation and determination procedures are being revised in the light of new Standards Board guidance, the Standards Committee (England) Regulations 2008 and actual experience of holding panel hearings.

3.16 **Liaison and Joint Working with Other Statutory Officers**

The Monitoring Officer is a Member of the Council's Corporate Management Team and has access to all documents and meetings of the Council relevant to his role. He reports directly to the Head of Paid Service (Chief Executive). He has regular meetings with the Chief Executive and with the Director of Finance & Resources who, as the financial monitoring officer has a similar monitoring role and powers in relation to financial matters. These arrangements have been effective in early identification of issues with advice being given or action being taken at the appropriate stage.

On matters of probity the Monitoring Officer works closely with the Director of Finance & Resources and the Head of Audit & Assurance. There are scheduled meetings with the District Auditor at which any issues of interest are discussed.

3.17 **Arrangements for the Parish Council**

The Monitoring Officer to the Council is also the Monitoring Officer for the Parish Council. The Legal and Democratic Services sections will continue to work on standards matters, as necessary, with the Chair, the Parish Clerk and the Parish Council representatives on the Standards Committee.

3.18 **Monitoring Officer reports**

The Monitoring Officer in respect of legality and the Director of Finance & Resources in respect of finance, both have statutory powers to intervene in decision making and to issue formal reports to the full Council. Neither officer

nor their predecessors has had to use their powers since the creation of the Council as a unitary authority in 1997.

3.19 **Maladministration**

The Monitoring Officer is supported in the investigation and resolution of allegations of maladministration by the Standards and Complaints team, under the Standards & Complaints Manager. This team is part of the Monitoring Officer's department, in the Performance and Equalities section. The team also has responsibilities for ethical standards matters.

Performance and Equalities report regularly to the Standards Committee (through the Standards and Complaints Manager) and to the Council's Overview and Scrutiny Committees so that Members are aware of the issues which it is helping other departments to resolve and the advice it is giving them to help reduce future instances of maladministration or poor performance.

Summary of complaints received under the corporate complaints procedures 2007/08

The Ombudsman received 93 complaints about the Council during 2007/08, a fall of 35 from the previous year. That reduction mainly resulted from falls in complaints about Housing, down by 8 to 24, Planning down by 18 to 14, and Education down by 6 to 5. Other complaints were broadly in line with previous years figures. Complaints about Parking and Highways increased by 5 to 14

15% of cases were resolved by Local Settlement which compares favourably to the national figure of 27%. Local Settlement is where an investigation is discontinued because the authority agrees to take action which the Ombudsman considers to be satisfactory to resolve the complaint. These investigations resulted in compensation payments amounting to £4000.

There were no findings of Maladministration and none of the complaints were dealt with by way of formal report finding Maladministration causing Injustice.

The Ombudsman considers that working relationships with the Council's complaints officers continue to be positive and professional.

Average response times continue to decrease to 28.7 days, just outside the target response time of 28 days.

The Council received 1788 Stage One corporate complaints in 2007/08, down 289 from the previous year. That reduction occurred as a result in falls in complaints about City Clean and Housing Benefits. Complaints about Transport and Highways, Revenues, Housing Management, Repairs and

Maintenance, Housing Needs have remained broadly consistent. Complaints about Development Control have increased.

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3.20 Overall Assessment

The standards of conduct among Members, Co-opted Members and Officers of the Council remain high and no significant problems have been identified. Although one case was referred to a Hearing Panel of the Standards Committee in the period covered by this report, it did not result in a finding that there had been any failure to observe the Council's Code of Conduct for Members.

There are no significant issues to be addressed in relation to complaints to the local Ombudsman.

All the audits undertaken by the Council internally as well as by external assessors regarding corporate governance are satisfactory overall.

The current Member and Officer arrangements to deal with conduct issues and support the role of the Monitoring Officer remain adequate.

4. CONSULTATION

4.1 There has been no consultation.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are none.

5.2 Legal Implications:

These are addressed in the body of the report.

Lawyer Consulted: Liz Woodley

Date: 28 October 2008

5.3 Equalities Implications:

There are none.

5.4 Sustainability Implications:

There are none.

5.5 Crime & Disorder Implications:

There are none.

5.6 Risk and Opportunity Management Implications:

There are none.

5.7 Corporate / Citywide Implications

There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None
- 2.

Background Documents

1. None
- 2.

Subject: *Revised procedures for local assessment, investigation and determination of complaints*

Date of Meeting: 11 November 2008

Report of: *Director of Strategy & Governance*

Contact Officer: Name: *Carl Hearsom* Tel: **29-4583**
E-mail: carl.hearsom@brighton-hove.gov.uk

Wards Affected: All

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report introduces the updated procedures for local assessment, investigation and determination of complaints about member conduct.

2. RECOMMENDATIONS:

- 2.1 That members adopt the updated procedures.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 On 12 December 2004 the Council adopted a procedure for the "Local investigation of allegations of Member Misconduct," and for the "Local determination of allegations of Member Misconduct." Those procedures were amended in March 2007.
- 3.2 With effect from 8 May 2008, the responsibility for receiving complaints of Member Conduct moved from the Standards Board to the Council.
- 3.3 On 23 May 2008 the Council adopted a procedure for the "Local assessment of allegations of Member Misconduct".
- 3.4 By virtue of the Standards Committee (England) Regulations 2008, the Council is obliged to consider guidance issued by the Standards Board when exercising its investigation and hearings functions.
- 3.5 On 23 June the Standards Board issued guidance on the Local Assessment of Complaints, and on 10 August 2008 this guidance was updated. At the same time the Standards Board issued new guidance for Local Investigation of Complaints and Standards Committees Determinations.

- 3.6 On 14 August, the Assessment Panel held its first meeting to consider an allegation of Member misconduct.
- 3.7 At the meeting of the Standards Committee on 16 September 2008, members noted the above and adopted the Fire Authority's procedures for local investigation and determination of complaints about member conduct as an interim measure.
- 3.8 The Council's own procedures have now been reviewed and updated in light of the updated Standards Board guidance and the experience of the Assessment Panel.
- 3.9 The key points to note are:
- 3.9.1 The existing procedure for Local Assessment of Complaints had been amended by John Heys on 8 May 2008. Although the Standards Board has subsequently issued amended guidance on this area, it contains no substantive changes. Therefore the only changes to the Local Assessment procedure are amendments to section 2, paragraph 5 regarding actions which have been taken to publicise the procedure and cosmetic amendments to correct spelling and grammar.
- 3.9.2 The Local Investigation procedure has been updated to include a section on deferral of complaints where another investigation is ongoing (for example, a criminal investigation or an investigation by another authority).
- 3.9.3 The Local Determination procedure has been amended to reflect the greater powers available to the Committee in imposing sanctions, as well as guidance from the Standards Board on considering the appropriate sanction. A summary of the hearing procedure has also been added.
- 3.9.4 The revised Assessment Investigation and Determination Procedures are attached as Appendices 1, 2 and 3.

4. CONSULTATION

- 4.1 No consultation has been carried out.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are none.

Finance Officer Consulted:

Date:

Legal Implications:

5.2 These are addressed in the body of the report at paragraph 3.4.

Lawyer Consulted: Liz Woodley Date: 15 October 2008

Equalities Implications:

5.3 There are no direct equalities implications arising from the report.

Sustainability Implications:

5.4 There are none.

Crime & Disorder Implications:

5.5 There are none.

Risk and Opportunity Management Implications:

5.6 There are none.

Corporate / Citywide Implications:

5.7 There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. **Procedure for Local Assessment of Code of Conduct Complaints**
2. **Procedure for Local Investigation of Allegations of Member Misconduct**
3. **Procedure for Local Determination Hearings of Allegations of Member Misconduct**

Documents In Members' Rooms

Background Documents

- 1.
- 2.

**BRIGHTON & HOVE CITY COUNCIL
ROTTINGDEAN PARISH COUNCIL**

LOCAL ASSESSMENT OF CODE OF CONDUCT COMPLAINTS

Section 1

Introduction

1. The following administrative procedures in sections 2 to 6 have been agreed with the Standards Committee as part of the processes and procedures for dealing with complaints about member conduct. They are based on the requirements of the Local Government Act 2000 (as amended) and relevant Regulations and Guidance. The Monitoring Officer has been given delegated authority by the Standards Committee to make amendments to these procedures and will exercise this discretion within any limitations imposed by the legislation.

2. In all sections of these procedures:-

“Code” means the Council’s Code of Conduct for members.

“Council” means Brighton & Hove City Council.

"independent person" means a person who is not a member or officer of the Council or the Parish Council who has been appointed to the Standards Committee of the Council.

“member” means any member of the Council, which includes co-optees with voting rights and any member of the Parish Council.

“Monitoring Officer” means the Director of Strategy and Governance or any other person acting on his behalf.

“Parish Council” means Rottingdean Parish Council.

"the Regulations" means the Standards Committee (England) Regulations 2008 and any other regulations applicable to these procedures.

“SCO” means “Standards and Complaints Officer” and is deemed to include a reference to the Monitoring Officer, as all members of the Standards and Complaints team are authorised by the Monitoring Officer to act for him.

“SBE” means the Standards Board for England.

“subject member” means a member who is the subject of a complaint.

Publicity for complaints procedure

1. In accordance with the Regulations and the guidance from the SBE, the arrangements set out in this section indicate the address to which written allegations of breaches of the Code should be sent and the steps which the Council considers are reasonable to bring details of the address and the complaints procedure to members of the public.
2. The address for this purpose will be:- The Standards Committee, c/o the Standards and Complaints Team, Brighton & Hove City Council, FREEPOST SEA2560, Brighton, BN1 1ZW.
3. The Council will publish a notice (see item 5(b) below) detailing where Code complaints should be sent and the notice will also make it clear that the Council is responsible for dealing with any Code complaints relating to the Parish Council.
4. The guidance suggests various ways that the Council should publicise the new arrangements so that members of the public know how to make a complaint and points out that the Council must also update this information and continue to publicise the complaints procedure regularly.
5. The Standards and Complaints team have made the following publicity arrangements in accordance with the guidance:-
 - (a) Details of how complaints about members should be made have been posted on the Council's website and it was made a featured item on the front page of the website.
 - (b) A notice was included in the June 2008 issue of the Council's paper (Citynews).
 - (c) A notice was published in the 23 June 2008 edition of the Argus newspaper.
 - (d) A message has been circulated to council staff about the new arrangements, via a posting on the Council's intranet site (the Wave).
 - (e) Written notification has been sent to the Citizens Advice Bureau with interim details of the new arrangements.
 - (f) Publicity information has been sent to the Secretary of the Parish Council.
6. Further publicity action to be carried out as soon as possible by the Standards and Complaints team will be:-
 - (a) New leaflets and posters will be produced in the same design as existing information used to publicise the corporate and social care complaints procedures.

- (b) These will be circulated to the Parish Council and all council reception areas, libraries, Citizens Advice Bureaux and community groups.
- (c) Other periodic, general awareness initiatives will be carried out by S&C to satisfy the requirement for updating / regular publicity about the Code complaints process.

Section 3

Procedures for receiving & processing of complaints of member misconduct

- 1.0 This section should be read in conjunction with sections 4 and 5 in particular.
- 2.0 Procedures for dealing with complaints alleging a member may have breached the Code will be integrated into the Council's existing complaints framework.
- 3.0 Complaints about member conduct will be administered by officers of the Standards and Complaints Team who will provide administrative support to the Monitoring Officer and act as points of contact for the Standards Committee, Assessment Panel and the Assessment Review Panel.
- 4.0 Complaints must be received in writing but where that would place an unreasonable barrier for a person wishing to make a complaint the SCO will arrange for a verbal complaint to be transcribed for approval by the complainant or their representative.
- 5.0 Support will be provided for people who wish to make a complaint where English is not their first language.
- 6.0 Complaints received anonymously will be presented to the Assessment Panel only if they contain documentary or photographic evidence to support a serious or significant allegation.
- 7.0 A complaint may not necessarily be made in writing. For example, it may be a concern raised verbally with the SCO. In such cases the complainant should be asked whether they want formally to put the matter in writing to the Standards Committee. If the complainant does not, then the SCO should consider options for informal resolution to satisfy the complainant.
- 8.0 Complaints received will be analysed by a SCO to decide which complaint processes is most appropriate.
- 9.0 Some complaints may need to be processed through more than one of the Council's complaint processes, for example as corporate complaints, statutory complaints, complaints in relation to freedom of information rules etc. However, as far as possible the SCO will endeavour to process the complaint only through the most appropriate procedure.
- 10.0 If the SCO identifies that the complaint is in relation to the Code it will be referred to the Assessment Panel.

- 11.0 The SCO will notify the Committee Administrator who will arrange for the Assessment Panel to sit normally within 20 working days of the Council receiving the complaint. The SCO will supply any necessary papers to the Committee Administrator so that they can be forwarded to Panel members prior to the date of the meeting. There is no prescribed timescale for the papers to be sent out as the usual access to information rules do not apply (see Section 5) but the Committee Administrator will aim to send out the papers at least 2 working days in advance of the meeting.
- 12.0 The SCO will present a summarised report of the complaint to the Assessment Panel (see paragraph 17.0).
- 13.0 Where a number of complaints are received about the same matter the SCO will present one report to the Assessment Panel drawing together all the relevant information and highlighting any substantively different or contradictory information. The Assessment Panel will, however, make separate decisions in relation to each complaint.
- 14.0 When a formal complaint has been received the SCO has discretion to:-
- Acknowledge receipt of the complaint in writing, normally within 5 working days;
 - Inform the subject member that a complaint has been made about him/her by sending notification to the subject member stating:-
 - a complaint has been made;
 - the name of the complainant (unless confidentiality has been requested by the complainant and the Assessment Panel has not yet considered whether or not to grant it);
 - the relevant paragraphs of the Code that may have been breached;
 - that a written summary of the complaint will be provided to the subject member when the Assessment Panel has met to consider the complaint as only the Panel has power, under Section 57C(2) of the Local Government Act 2000 to give a written summary of the allegation to the subject member;
 - the date of that meeting if known.
- 15.0 The discretion set out at paragraph 14 above will usually be exercised shortly before the hearing date. However, the discretion will not be exercised if the SCO considers that the Panel may decide to withhold from the subject member the summary which it otherwise needs to give after making its decision, on the ground that it would be against the public interest to do so or it would prejudice any future investigation. (See Section 4 for “Criteria for withholding from subject member a summary of the complaint”.)

- 16.0 The SCO will not normally supply any further information at this stage to the subject member. If the SCO considers that further information might be disclosed, he/she will need to be satisfied he/she has legal power to do so bearing in mind the restrictions on disclosure in:-
- Section 63 of the Local Government Act 2000 as modified by Regulation 12
 - Data Protection Act 1998

Pre- assessment reports and enquiries

- 17.0 The SCO will prepare a short summary of the complaint for the Assessment Panel stating:-
- Whether the complaint is within the Panel's jurisdiction;
 - The paragraphs of the Code the complaint may relate to, or which have been identified by the complainant;
 - A summary of key aspects of the complaint
 - Any further information obtained by the SCO, e.g.
 - A declaration of office form and undertaking to observe the Code;
 - Minutes of meetings;
 - Member's entry in register of interests
 - Information from Companies House or Land Registry;
 - Other easily obtainable documents

and the SCO may also contact the complainant for clarification if unable to understand the document submitted. However, pre-assessment enquiries will not be carried out in such a way as to amount to an investigation. For example they will not extend to interviewing potential witnesses, the complainant or the subject member.

Decisions of the Assessment Panel

- 18.0 The Assessment Panel is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:-
- referral of the complaint to the monitoring officer of the authority concerned, which under section 57A(3) of the Local Government Act 2000 referral, as amended, may be another authority;
 - referral of the complaint to the SBE;
 - no action should be taken in respect of the complaint
- and will it will base its decisions on the criteria that have been agreed for making assessments (see section 4).
- 19.0 However, the Assessment Panel is permitted to consider intermediate options beyond no action but not as far as investigation. These are referred to as "other action" and criteria are set out in Section 4 under "Circumstances in which decisions may be to take action short of investigation ("other action)".

Referral for Investigation

- 20.0 If the Assessment Panel decides that a complaint it has considered should be forwarded to the Monitoring Officer for investigation all relevant parties will be informed by the SCO of the decision, if appropriate advising who will be responsible for conducting the investigation. However, the Assessment Panel does not have to supply the subject member with a summary of the complaint if it decides doing so would be against the public interest or would prejudice any further investigation. (See Section 4 for “Criteria for withholding from subject member a summary of the complaint”.)
- 21.0 If the Assessment Panel believes a complaint should be investigated by the SBE the matter will be referred to them as quickly as possible via the SCO.
- 22.0 If the SBE decline to investigate they will return it to the Assessment Panel who will then assess the complaint.

No Action

- 23.0 As soon as possible, and normally within 5 working days, after making the decision to take no action over the complaint the Assessment Panel will give all parties notice of its decision and the reasons for that decision.
- 24.0 All relevant parties will be informed of that decision by the SCO on behalf of the Assessment Panel.
- 25.0 A copy of that decision will be provided to the Parish Clerk if the subject member is a member of the Parish Council.
- 26.0 Where no potential breach of the Code is disclosed by the complaint the complainant will be advised by the SCO of their right to ask for a review. The SCO will inform the complainant they must submit any request for a review in writing, including any reasons for the request, and that the request for review must be made within 30 days beginning with the date on the notice of the initial assessment decision by the Assessment Panel.

Review of the assessment

- 27.0 If a request for a review is received by the SCO all parties will be notified.
- 28.0 The SCO will notify the Committee Administrator who will arrange for the Assessment Review Panel to sit normally within 20 working days of

the Council receiving the complaint. It must in any case carry out the review within 3 months of receiving the request. The SCO will present a summarised report of the complaint to the Assessment Review Panel. (see paragraph 17.0).

- 29.0 There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the Assessment Review Panel will consider carefully if it is more appropriate to pass this to an Assessment Panel to be handled as a new complaint. In this instance, the Assessment Review Panel will still need to make a formal decision that the review request will not be granted. For example, a review may be more appropriate if a complainant wishes to challenge that:-
- (a) not enough emphasis has been given to a particular aspect of the complaint;
 - (b) there has been a failure to follow any published criteria;
 - (c) there has been an error in procedures.
- However, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable.

Decision of the Assessment Review Panel

- 30.0 The Assessment Review Panel will base its decisions on the criteria that have been agreed for making assessments (see Section 4). As soon as possible after reaching its decision the Assessment Review Panel will notify all parties of its decision and the reasons for its decision.
- 31.0 If the decision is to refer to SBE or the Monitoring Officer for investigation all parties will be informed and will be provided with a summary of the complaint normally within 5 working days unless the Assessment Review Panel decides that doing so would be against the public interest or would prejudice any further investigation. (See Section 4 for “Criteria for withholding from subject member a summary of the complaint”.)
- 32.0 If the Assessment Review Panel decides that a complaint they have considered should be forwarded to the Monitoring Officer for investigation the SCO will if appropriate also advise who will be responsible for conducting the investigation.
- 33.0 If the Assessment Review Panel believes a complaint should be investigated by the SBE the matter will be referred to them as quickly as possible via the SCO
- 34.0 If the SBE decline to investigate they will return it to the Assessment Review Panel who will then assess the complaint.

- 35.0 If the Assessment Review Panel decides to take no action over a complaint they will give notice to the SCO who will advise the relevant parties of the decision normally within 5 working days.
- 36.0 If the subject member is a member of the Parish Council the SCO will also advise the Parish Clerk of the decision normally within 5 working days.
- 37.0 Where no potential breach of the Code is disclosed by the complaint the complainant will be advised by a SCO on behalf of the Assessment Review Panel.

Additional items

- 38.0 People who make repetitive or vexatious complaints will be responded to by the SCOs in the way outlined by the Council's corporate procedure for dealing with such matters. Issues that have previously been dealt with will not be responded to but any new allegations will be considered. The Panel procedures for such complaints are dealt with further in Section 4 under the heading "Multiple and vexatious complaints".
- 39.0 All complaints will be recorded by the SCO on the Council's complaints management system. This will include all details of persons involved, relevant dates, issues of complaint, relevant paragraphs of the Code and outcomes. Any such information which is required by the legislation to remain confidential will only be disclosed to the extent that the law permits.
- 40.0 Documents relating to complaints that the Assessment Panel or the Assessment Review Panel have decided not to investigate will be kept by SCO for a minimum of twelve months. The summary required to be kept by the Panel will be kept for a minimum of 6 years (see Section 5 "Access to meetings and decision making")
- 41.0 Documents relating to complaints that have resulted in further action will be kept for by SCO for a minimum of 6 years. The summary required to be kept by the Panel will be kept for a minimum of 6 years (see Section 5 "Access to meetings and decision making")
- 42.0 A SCO will not take part in the complaint process if there is a potential conflict of interest.
- 43.0 If a Panel decides to refer a matter to the Monitoring Officer for investigation, the SCO who has taken part in the assessment/assessment review process will not be appointed to investigate the matter.

Criteria for decisions by the Assessment Panel and the Assessment Review Panel

Initial tests

1. Before assessment of a complaint begins, the Assessment Panel or Assessment Review Panel should be satisfied that the complaint meets the following tests:-
 - (a) it is a complaint against one or more named members of the Council or Parish Council;
 - (b) the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
 - (c) the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.
2. If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.
3. If the complaint passes these tests, the Panel will go on to consider whether to take no action, whether to refer the complaint for investigation, or whether refer it to the Monitoring Officer for other action.

Assessment criteria

4. The Standards Committee has developed criteria against which the Assessment Panel and the Assessment Review Panel assess new complaints and decide what action, if any, to take. The aim of these criteria is to reflect local circumstances and priorities, to be simple, clear and open, to ensure fairness for both the complainant and the subject member, and to protect the Panel members from accusations of bias. These criteria can be reviewed and amended as necessary but this will not be done during consideration of a matter.
5. In drawing up the assessment criteria, the Standards Committees has borne in mind
 - (a) the importance of ensuring that complainants are confident that complaints about member conduct are taken seriously and dealt with appropriately and
 - (b) that deciding to investigate a complaint or to take other action will cost both public money and the officers' and elected members' time. This is an important consideration as it is appropriate to take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious.

Circumstances in which decisions may be to take no action or refer the complaint to another authority's Monitoring Officer

6. In reaching their decisions on the action to be taken in relation to complaints, the Assessment Panel and the Assessment Review Panel will ask themselves the following questions and consider the following response statements:

Q: Has the complainant submitted enough information to satisfy the Panel that the complaint should be referred for investigation or other action?

If the answer is **no**: "The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the Panel is taking no further action on this complaint."

Q: Is the complaint about someone who is no longer a member of the Council or Parish Council, but is a member of another authority? If so, does the Panel wish to refer the complaint to the monitoring officer of that other authority?

If the answer is **yes**: "Where the member is no longer a member of our Council or the Parish Council but is a member of another authority, the complaint will be referred to the standards committee of that authority to consider."

Q: Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?

If the answer is **yes**: "The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken."

Q: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is **yes**: "The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted."

Q: Is the complaint too trivial to warrant further action?

If the answer is **yes**: "The matter is not considered to be sufficiently serious to warrant further action."

Q: Does the complaint appear to be simply malicious, politically motivated or tit-for-tat or is the complainant in some other way to be regarded as a vexatious complainant (see below)?

If the answer is **yes**: “The matter appears to be simply malicious, politically motivated, tit-for-tat or vexatious, and not sufficiently serious, and it was decided that further action was not warranted”.

Q: Is there any other good reason why no action should be taken in relation to the complaint?

If the answer is **yes**: “The matter is not considered to warrant further action because [and state the reason].”

Circumstances in which decisions may be to take action short of investigation ("other action")

7. When the Panel considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The Panel must consult its Monitoring Officer before reaching a decision to take other action.

8. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code will lend themselves to being resolved in this way. They can also indicate a wider problem at the Council or Parish Council. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the Council or Parish Council to work more effectively, and of avoiding similar complaints in the future.

9. The Panel can choose this option in response to an individual complaint or a series of complaints. The action decided upon does not have to be limited to the subject member or members. In some cases, it may be less costly to choose to deal with a matter in this way rather than through an investigation, and it may produce a more effective result.

10. It is not possible to set out all the circumstances where other action may be appropriate, but an example could be where the Council or Parish Council appeared to have a poor understanding of the Code and related procedures. Evidence for this may include:

- (a) a number of members failing to comply with the same paragraph of the Code;
- (b) officers giving incorrect advice;
- (c) failure to adopt the Code;
- (d) inadequate or incomplete protocols for use of authority resources.

11. Other action may also be appropriate where a breakdown in relationships within the Council or Parish Council was apparent, evidence of which could include:

- a) a pattern of allegations of disrespect, bullying or harassment;
- b) factionalised groupings within the Council or Parish Council;

- c) a series of 'tit-for-tat' allegations;
- d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

12. The Panel is encouraged to consider other action on a practical basis, taking into account the needs of the Council and the Parish Council. Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code – the decision is made as an alternative to investigation. If the Monitoring Officer embarks on a course of other action, he should emphasise to the parties concerned that no conclusion has been reached on whether the subject member failed to comply with the Code.

13. Complaints that have been referred to the Monitoring Officer for other action should not then be referred back to the Panel if the other action is perceived to have failed. This is unfair to the subject member, and a case may be jeopardised if it has been discussed as part of a mediation process. There is also a difficulty with defining 'failure' in terms of the other action undertaken. The decision to take other action closes the opportunity to investigate and the Panel should communicate this clearly to all parties.

14. Accordingly the normal practice of the Panel will be to require the parties involved to confirm in writing that they will co-operate with the process of other action proposed before making the final decision to proceed. If it adopts this approach, the Panel will write to the relevant parties outlining:

- (a) what is being proposed;
- (b) why it is being proposed;
- (c) why they should co-operate;
- (d) what the standards committee hopes to achieve.

15. Whatever approach to other action that the Panel adopts, it will ensure that all parties are clear about what is, and what is not, going to happen in response to the complaint.

16. The following are some examples of alternatives to investigation:

- (a) arranging for the subject member to attend a training course;
- (b) arranging for that member and the complainant to engage in a process of conciliation;
- (c) instituting changes to the procedures of the Council or Parish Council if they have given rise to the complaint.

Circumstances in which decisions may be to refer the complaint to the Monitoring Officer for investigation

17. If the Panel concludes that none of the above circumstances apply, it will refer the complaint to the Monitoring Officer for investigation, unless it considers that the circumstances warrant the referral of the complaint to the SBE, taking account of the criteria set out below.

Circumstances in which decisions may be to refer the matter to the SBE

18. There will sometimes be issues in a case, or public interest considerations, which make it difficult for the Panel to deal with the case fairly and speedily. In such cases, the Panel may wish to refer a complaint to the SBE to be investigated by an ethical standards officer.

19. The Panel will take the following matters into account in deciding which cases to refer to the SBE in the public interest:

- (a) Does the Panel believe that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Panel to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the Council's cabinet or standards committee?
- (b) Does the Panel believe that the status of the complainant or complainants would make it difficult for the Panel to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the Council's cabinet or standards committee, the chief executive, the monitoring officer or other senior officer?
- (c) Does the Panel believe that there is a potential conflict of interest of so many members of the Panel and the Standards Committee that it could not properly monitor the investigation?
- (d) Does the Panel believe that there is a potential conflict of interest of the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?
- (e) Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
- (f) Will the complaint require substantial amounts of evidence beyond that available from the Council or Parish Council's documents, its members or officers?
- (g) Is there substantial governance dysfunction in the Council or its Standards Committee?
- (h) Does the complaint relate to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the Council?
- (i) Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
- (j) Might the public perceive the Council to have an interest in the outcome of a case? For example if the Council could be liable to be judicially reviewed if the complaint is upheld.
- (k) Are there exceptional circumstances which would prevent the Council or its Standards Committee and Panels investigating the complaint competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation?

Circumstances in which complaints may be withdrawn

20. There may be occasions when complainants ask to withdraw their complaints prior to the Panel having made decisions on them. In these circumstances, the Panel will decide whether to grant such requests.

21. The Panel will take into account any reasons put forward by the complainant in connection with a request to withdraw and, without limiting its discretion, the Panel will have regard to following considerations in particular:

- (a) Does the public interest in taking some action on a complaint outweigh the complainant's desire to withdraw it?
- (b) Is a complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw a complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

22. If the Panel decides that any of these questions are answered in the affirmative, it is less likely to allow a complaint to be withdrawn.

Multiple and vexatious complaints

23. Unfortunately, a small number of people abuse the complaints process. Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in the complaints process:-

- (a) repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident;
- (b) use of aggressive or repetitive language of an obsessive nature;
- (c) repeated complaints that disclose no potential breach of the Code;
- (d) where it seems clear that there is an ulterior motive for a complaint or complaints;
- (e) where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted.

24. The Standards Committee's general policy is that people who make repetitive or vexatious complaints will be responded to in the ways set out in the Council's Corporate Complaints procedures. However, even where restrictions are placed on an individual's contact with the authority, the individual cannot be prevented from submitting a complaint. New allegations must still be considered as they may contain a complaint that requires some action to be taken.

25. Nevertheless, if the Panel has already dealt with substantially the same complaint by the same person and the Monitoring Officer does not believe that there is any new evidence, then any subsequent complaint will not be considered. The guiding principle is that the Panel will consider every new complaint that it receives in relation to the Code but it will not carry out more

than one assessment and assessment review into a complaint from the same person which is basically the same complaint.

Complaints about members of more than one authority

26. This section deals with the issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member.

27. In such cases, the member may have failed to comply with more than one authority's Code. For example, an individual who is a member of the Council and of the Fire Authority could be the subject of complaints that they have breached the Codes of both authorities. As such, it would be possible for both the Assessment Panels of the both the authorities to receive complaints against the member.

28. Where a complaint is received about a dual-hatted member, the SCO should check if a similar allegation has been made to the other authority, or authorities, on which the member serves.

29. Decisions on which Assessment Panel should deal with a particular complaint must then be taken by the Assessment Panels themselves, following discussion with each other. They may take advice as necessary from the SBE.

30. This will allow for a cooperative approach, including sharing knowledge and information about local circumstances, and cooperation in carrying out investigations to ensure resources are used effectively.

Criteria for withholding from subject member a summary of the complaint

31. If the Assessment Panel decides to take no action over a complaint, then as soon as possible after making the decision it must give notice in writing of the decision and set out clearly the reasons for that decision. Where no potential breach of the Code is disclosed, the Assessment Panel must explain in the decision notice what the allegation was and why they believe this to be the case. This notice must be given to the relevant parties, ie the complainant, the subject member, and the Parish Council's clerk if the subject member is a Parish Councillor.

32. If the Assessment Panel decides that the complaint should be referred to the Monitoring Officer or to the SBE, it must send a summary of the complaint to the relevant parties. It should state what the allegation was and what type of referral it made, for example whether it referred the complaint to the Monitoring Officer or to the SBE for investigation. The decision notice must explain why a particular referral decision has been made. However, after it has made its decision, the Assessment Panel does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation.

33. This could happen where it is considered likely that the subject member may intimidate the complainant or the witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed.

34. The Assessment Panel should take advice from the Monitoring Officer in deciding whether it is against the public interest to inform the subject member of the details of the complaint made against them. It should also take advice from the Monitoring Officer in deciding whether informing the subject member of the details of the complaint would prejudice a person's ability to investigate it.

35. The Monitoring Officer will need to help the Assessment Panel to consider the potential risks to the investigation. This is to determine whether the risk of the case being prejudiced by the subject member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the subject member.

36. The Assessment Panel can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary must be kept under review as circumstances change.

Points in relation to Panel procedures for assessing / re-assessing complaints

Composition of Panels and conflicts of interest

1. As required by the relevant Regulations, the Standards Committee has established two sub-committees:-
 - the Assessment Panel to carry out the initial assessment of complaints received by the Standards Committee and
 - the Assessment Review Panel to deal with any request the Standards Committee receives from a complainant to review its decision to take no action in relation to a complaint.
2. The Assessment Panel and the Assessment Review Panel will each consist of three members of the Standards Committee (the minimum number for Panels). This will include at least one independent person.
3. If a complaint relates to a member of the Parish Council, the assessment Panel or Assessment Review Panel will include in its number a member of the Parish Council.
4. The Assessment Panel and the Assessment Review Panel will be chaired by an independent person.
5. As neither of the Panels is required to have fixed membership or a fixed chair, the Committee Administrator, consulting the Chairman of the Standards Committee as appropriate, will arrange attendance in accordance with the availability of members of the Standards Committee and any other relevant factors such as actual or potential conflicts of interest.
6. In certain situations, a Panel member might initially be involved with the assessment or assessment review of a case that is then referred to the SBE or to the Monitoring Officer. The case might then be referred back to the Panel to consider again. In such circumstances, the member may continue their participation in the assessment/assessment review process.
7. However, Panel members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.
8. Standards Committee members involved in a complaint's initial assessment, or in an assessment review can take part in any subsequent determination hearing. The purpose of the initial assessment decision or assessment review is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Assessment and Assessment Review Panels make no findings of fact.

Therefore, a member involved at the initial stage or the review stage may participate in a subsequent hearing, because a conflict of interest does not automatically arise.

9. The assessment/assessment review processes must be conducted with impartiality and fairness. In some cases a member of the Standards Committee may be disqualified by law from being involved in a case, for example because of a personal and prejudicial interest under the Code. There will also be cases where it would not be appropriate for a member of the Standards Committee to be involved in the processes, even if not disqualified from doing so by law. A member of the Standards Committee should not participate in the processes on either Panel if he/she is

- (a) a complainant,
- (b) closely associated with someone who is a complainant,
- (c) a potential witness or victim relating to a complaint or
- (d) otherwise directly or indirectly connected with a complaint.

10. Regulations give authorities new power to appoint anyone who is an independent person serving on the Standards Committee of another authority to their own Standards Committees. The Monitoring Officer has been given authority by the Standards Committee to exercise this power in order to appoint additional independent persons to serve on the Council's Assessment Panel and Assessment Review Panel. The power will be exercised to make temporary appointments to deal with particular complaints, for example if the independent persons on the Council's Standards Committee were unavailable or conflicted out of a particular case.

Access to meetings and decision making

11. Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint must be conducted in closed meetings. These are not subject to the notice and publicity requirements under the Local Government Act 1972.

12. Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, Assessment and Assessment Review Panels are not subject to the following rules:-

- (a) rules regarding notices of meetings;
- (b) rules on the circulation of agendas and documents;
- (c) rules over public access to meetings;
- (d) rules on the validity of proceedings.

13. Instead, the Panels will comply with Regulation 8 of the Regulations, which sets out what must be done after a Panel has considered a complaint. The Regulations require a written summary to be produced which must include:-

- (a) the main points considered
- (b) the conclusions on the complaint
- (c) the reasons for the conclusion

14. The summary must be written having regard to the SBE's guidance and may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation.

15. The written summary must be made available for the public to inspect at the Council's offices for six years and given to the Parish Council if concerned in the case. The summary does not have to be available for inspection or sent to the Parish Council until the subject member has been sent the summary and usually the summary will be sent to the subject member before such action is taken.

16. In limited situations, a Panel can decide not to give the written summary to the subject member when a referral decision has been made. If this is the case, public inspection and Parish Council notifications will usually occur when the written summary is eventually given to the subject member during the investigation process. (See section 3 which contains further details of the notification requirements in relation to decisions of the Panels.)

Confidentiality of the complainant

17. As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Panels. The Panels should consider the request for confidentiality alongside the substance of the complaint itself.

18. The criteria by which the Panels will consider requests for confidentiality will include the following:-

- (a) The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle-blowing policy);
- (c) The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, the Panels may wish to request medical evidence of the complainant's condition.

19. In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.

20. When considering requests for confidentiality, the Panels will also consider whether it is possible to investigate the complaint without making the complainant's identity known.

21. If a Panel decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The Panel will decide where the balance lies in the particular circumstances of each complaint.

General

22. Other points about the Panel procedures are incorporated in Section 3.

Monitoring by Standards Board for England

1. The SBE has not as yet specified what information it will require from the Council in carrying its function as a regulator.
2. The SCOs have, however, make a number of assumptions about the data and monitoring information likely to be required and also that which it is likely the Council will find useful for its own purposes to collect.
3. It is therefore proposed that the Standards and Complaints Team will record details of:
 - Numbers of complaints received;
 - Decisions and outcomes, including requests for reviews;
 - Compliance with timescales;
 - Paragraphs of the Code that have accounted for complaints and frequency they arise;
 - Any emerging patterns of behaviour or themes arising from complaints received;
 - Sources of complaint, that is other members, members of the public etc;
 - Equalities monitoring data.
4. This information will be included in regular 'Complaints Update' reports to the Standards Committee.



Brighton & Hove

Procedure for Local Determination Hearings of Allegations of Member Misconduct

Procedure for Local Determination Hearings of Allegations of Member Misconduct

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Introduction and Summary

This document sets out the procedure which will be followed in the local determination of allegations of misconduct by Members. It takes into account the statutory provisions in the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and the statutory guidance issued thereunder.

The procedure enables a Hearing Panel to receive an investigation report and hear both sides of the matter. The Hearing Panel can then come to an informed decision as to whether the Member has failed to comply with the authority's Code of Conduct for Members and upon any consequential action.

The Hearing Panel acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member 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.

The Hearing Panel will normally consist of three person (which is the minimum number required) including at least one independent person and at least one Member of the authority or, where the allegation relates to a Member of Rottingdean Parish Council, at least one member of that body.

A timeline for the local determination procedure can be found at Appendix B to this document, and a summary of the procedure of the hearing itself at Appendix C.

1 Interpretation

- (a) "Code of Conduct" means the Code of Conduct for Members.
- (b) "ESO" means Ethical Standards Officer.
- (c) "Member", except where the context otherwise requires, means the member or co-opted member of the authority who is the subject of the allegation being considered by the Hearing Panel. It also includes the Member's nominated representative.
- (d) "Investigating Officer" as appropriate in the circumstances means the ESO who referred the report to the authority, and includes his or her nominated representative, or the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (e) "The matter" is the subject matter of the Investigating Officer's

report.

- (f) "The Hearing Panel" refers to the Standards Sub-Committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct.
- (g) "The Democratic Services Officer" means a person given responsibility by the authority for supporting the Hearing Panel's discharge of its functions, acting as clerk for the hearing including recording the Hearing Panel's decisions.
- (h) 'Legal Adviser' means a person given responsibility by the authority for providing legal advice to the Hearing Panel. This may be the Monitoring Officer, another legally qualified or suitably experienced officer of the authority, or someone appointed for this purpose from outside the authority¹
- (i) "Regulation 17" and "Regulation 20" means respectively regulations 17 and 20 of the Standards Committee (England) Regulations 2008.
- (j) "The Chair" refers to the person presiding at the hearing.
- (k) "Parish Council" means Rottingdean Parish Council.

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 and does not conflict with any statutory requirement.

3 Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Panel, another person. Note that the cost of such representation must be met by the Member, unless the Hearing Panel has expressly agreed to meet all or any part of that cost.²

¹ The role of the Investigating Officer must be kept distinct from the roles of Democratic Services Officer and Legal Adviser to the Hearing Panel. The Investigating Officer must be a different person from the person or persons who act as Democratic Services Officer and/or legal adviser to the Hearing Panel in respect of the allegation.

² Regulations under Section 101 of the Local Government Act 2000 grant authorities a discretion to provide an indemnity or to provide insurance to Members to meet the costs which they may incur in "Part 3 proceedings" (investigations, hearings or other proceedings under Part III of the 2000 Act), but 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.

4 Pre-hearing Procedure

Upon (1) reference of a matter from an ESO for local determination following completion of the ESO's report or (2) receipt of a final report of the Investigating Officer which includes a finding that the Member failed to comply with the Code of Conduct or (3) if a Hearing Panel has found under Regulation 17 that a report from the Investigating Officer should be considered at a Hearing Panel, the Monitoring Officer shall:

- (a) Arrange a date for the Hearing Panel to hear the matter³;
- (b) Send a copy of the Investigating Officer's report to the Member and advise him/her of the date, time and place for the hearing, provide the Member with a copy of the determination procedure and outline the Member's rights and responsibilities during the hearing process;
- (c) Send a copy of the Investigating Officer's report to the person who made the allegation and advise him/her of the date, time and place for the hearing and provide him/her with a copy of the determination procedure;
- (d) Notify the Parish Council of the matter and of the date, time and place of the hearing if the allegation is made against a Parish Councillor;
- (e) Request the Member to complete and return the model Pre-Hearing Forms A, B, C, D and E, as recommended by the Standards Board for England or similar as appropriate within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Member, determine whether the Hearing Panel 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 and arrange for their attendance;
- (g) Send a copy of the Member's response to the Investigating Officer for his/her comments, confirm the time, date and place of the hearing and invite the Investigating Officer to confirm within 14 days of receipt whether he/she:

³ The hearing must normally be conducted within 3 months of the date when the matter is referred by the ESO to the Monitoring Officer (in the case of an ESO investigation) or the date when the Investigating Officer delivers his final report to the Monitoring Officer (in the case of local investigations). There must also be a gap of at least 14 days between the date on which the Monitoring Officer sends the report to the Member and the date of the Hearing Panel, unless the Member agrees to the hearing being earlier.

- wants to be represented at the hearing;
 - wants to call relevant witnesses to give evidence to the hearing panel;
 - wants any part of the hearing held in private; and
 - wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
- (h) Notify the witnesses who will be required to attend the hearing of the date, time and place of the hearing and that their attendance is required;
- (i) Prepare a Pre-Hearing Summary Report:
- Setting out the date, time and place of the hearing;
 - Summarising the allegation;
 - Outlining the main facts of the case that are agreed;
 - Outlining the main facts of the case that are not agreed;
 - Noting whether the Member concerned and the Investigating Officer will go to or be represented at the hearing;
 - Listing those witnesses, if any, who will be asked to give evidence; and
 - Outlining the proposed procedure for the hearing.
- (j) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent, at least two weeks before the hearing, to:
- (i) All members of the Hearing Panel;
 - (ii) The Member;
 - (iii) The person who made the allegation, and
 - (iv) The Investigating Officer.

5 Legal Advice to the Hearing Panel

The Hearing Panel may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearing Panel should be

shared with the Member and the Investigating Officer if they are present.⁴

6 Setting the scene at the hearing

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

7 Preliminary procedural issues

The Hearing Panel shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chair shall ask members of the Hearing Panel 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 Hearing Panel is quorate⁴

(c) Hearing procedure

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

(d) Proceeding in the absence of the Member

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

⁴ In the interests of openness, the Hearing Panel 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 adviser should repeat in the presence of the Investigating Officer and the Member the advice which he/she has tendered.

⁴ A meeting of the Hearing Panel is not quorate unless at least three members of the Hearing Panel are present for the duration of the meeting. See the Introduction for further information about the composition of the Panel.
NB: 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 Hearing Panel is dealing with a parish matter.

- (i) the Chair shall ask the Legal Adviser or Democratic Services Officer whether the Member has indicated his/her intention not to attend the hearing;
- (ii) the Hearing Panel shall then consider any reasons which the Member 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 Hearing Panel is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Hearing Panel is not satisfied with such reasons, or if the Member has not given any such reasons, the Hearing Panel shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Hearing Panel 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 Member, the Investigating Officer and the Legal Adviser or Democratic Services Officer whether they wish to ask the Hearing Panel 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 Hearing Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Hearing Panel 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.

8 The hearing of the allegation of failure to comply with the Code of Conduct⁵

The Hearing Panel will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report. ⁶

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

The Chair will ask the Legal Adviser or Democratic Services Officer⁷ to present the Pre-Hearing Summary Report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the

⁵ The model procedure recommended by the Standards Board suggests that the Hearing Panel should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. These two are so closely connected that the Hearing Panel may find that it can conveniently determine the two together without any loss of fairness.

⁶ Note that the Hearing Panel'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 Hearing Panel apprehends that the Member may have failed to comply with the Code of Conduct in some other manner. Note that any possible additional or alternative failure will not be within the remit of the Hearing Panel as, at that stage, the Member will not have had notice of the Hearing Panel'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 Hearing Panel does 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 may refer the second matter to the Monitoring Officer to consider what steps, if any, may be necessary.

⁷ Tasks such as the following will be undertaken by the Legal Adviser or Democratic Services Officer as appropriate in the circumstances (and both roles may be performed by the same person):- (i) the conduct of the pre-hearing process; (ii) the presentation of an introductory report to the Hearing Panel at the commencement of the hearing setting out the outcomes of the pre-hearing process; (iii) the giving of legal advice to the Hearing Panel; (iv) the recording of the Hearing Panel's determination; and (v) the distribution and publication of any required notices of the Hearing Panel's determination.

Investigating Officer's report, the Hearing Panel may then make a determination that the Member 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 11).

- (ii) If the Member identifies additional points of difference, the Chair shall ask the Member 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 Hearing Panel is not satisfied with the Member'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 Member 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 Member 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 Chair will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member 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 Hearing Panel 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 Hearing Panel shall determine on the advice of the Legal Adviser or Democratic Services 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 Member if there are any matters upon which the Hearing Panel should seek the advice of the Investigating Officer or the witness.

(d) The Member's response

- (i) The Chair shall then invite the Member 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 Member'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 Hearing Panel should seek the advice of the Member or the witness.

(e) Witnesses

- (i) The Hearing Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Member 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 Hearing Panel may address questions to the Investigating Officer, to the Member or to any witness.

(f) Additional Evidence

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

- (g) If the Hearing Panel 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 Hearing Panel may (on not more than one occasion) adjourn the hearing and make a request to the local Investigating Officer to seek and provide such additional

evidence and to undertake further investigation on any point specified by the Hearing Panel.

- (h) Determination as to whether there was a failure to comply with the Code of Conduct.
 - (i) At the conclusion of the Member's response, the Chair shall ensure that each member of the Hearing Panel 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 Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 9(b)(i) above), the Hearing Panel shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
 - (iii) The Hearing Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) The Hearing Panel'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 Member or a witness, or to seek the legal advice. If it requires any further information, it may adjourn on not more than one occasion and instruct an officer or request the Member to produce such further evidence to the Hearing Panel.
 - (v) At the conclusion of the Hearing Panel's consideration, the Hearing Panel shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
 - (vi) The Hearing Panel shall then return to the main hearing room and the Chair will state the Hearing Panel's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

9 If the Member has not failed to follow the Code of Conduct

If the Hearing Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) The Chair will announce the Hearing Panel's decision that the Member has not failed to follow the Code of Conduct in respect of the alleged matter. The Chair will then move on to make any other announcements (if appropriate) as follows:
- (b) If the Hearing Panel apprehends, from the evidence which they have received during the hearing, that the Member may have failed to comply with the Code of Conduct (other than the matter which the Hearing Panel has just determined) and that this potential failure ought to be assessed, the Chair shall outline the Hearing Panel's concerns and state that the Hearing Panel will refer this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the relevant Standards Committee.
- (c) The Chair should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the Legal Adviser or Democratic Services Officer before the Hearing Panel finalises any such recommendations.
- (d) Finally, the Chair should ask the Member whether he/she wishes the authority not to publish its finding that he or she had not failed to comply with the Code of Conduct and its reasons for that finding in a local newspaper and (in both cases at the discretion of the Hearing Panel) on the Authority's website and in any other publication.⁸

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

- (a) The Chair may ask the Investigating Officer (if present, or otherwise the Legal Adviser or Democratic Services Officer) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Hearing Panel should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chair will then ask the Member to respond to the Investigating Officer's advice.
- (c) The Chair will then ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable

⁸ The summary of the Hearing Panel's decision and reasons for it must be published in one or more local newspapers that are independent of the Council and otherwise as the Hearing Panel directs, unless the Hearing Panel finds that the Member did not fail to follow the Code of Conduct, in which case the Member is entitled to ask that there is no such publication.

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 Hearing Panel may address questions to the Investigating Officer, the Member and/or the Legal Adviser as necessary to enable him/her to take such an informed decision.
- (e) The Chair should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the Legal Adviser or Democratic Services Officer;
- (f) The Hearing Panel 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 Hearing Panel will make to the authority.
- (g) In considering whether to impose a sanction and, if a sanction is to be imposed, what that sanction should be, the Hearing Panel shall take into account the guidance in Appendix A to this Procedure.
- (h) At the completion of their consideration, the Hearing Panel shall return to the main hearing room and the Chair shall state the Hearing Panel'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 Hearing Panel will make to the authority.

11 Reference back to the ESO or Investigating Officer

- (a) If the Hearing Panel is considering a report referred by an ESO it may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request, with reasons, to the ESO concerned that the matter be referred back to the ESO for further investigation. If the request is accepted, the Hearing Panel shall cease its consideration of the matter. If it is not accepted, the Hearing Panel shall continue its consideration of the matter and make no further such requests.
- (b) If the Hearing Panel is considering a report prepared by the Monitoring Officer (or a person appointed by him), it may at any stage prior to the conclusion of the hearing adjourn the hearing and, on one occasion only, require the Monitoring Officer to seek

further information or undertake further investigation on any point specified by it.

12 The close of the hearing

- (a) The Hearing Panel will announce its decision on the day of the hearing and provide the Democratic Services Officer with a short written statement of its decision, which the Democratic Services Officer will deliver to the Member 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 Democratic Services Officer will agree in draft form a formal written notice of the Hearing Panel's determination. The front cover of the decision will include the following information:
 - The names of:
 - the Council;
 - the Member;
 - the complaint;
 - the Chair;
 - the other members of the Hearing panel;
 - the Monitoring Officer;
 - the Investigating Officer;
 - the Democratic Services Officer;
 - The Council's case reference number and any applicable case reference number from the Standards Board for England;
 - The date of the hearing; and
 - The date of the report.

The formal written notice shall contain:

- A summary of the complaint;
- The relevant section or sections of the Code of Conduct;

- A summary of the evidence considered and representations made;
 - The findings of fact, including the reasons for them;
 - the finding as to whether the Member failed to follow the Code, including the reasons for that finding;
 - the sanctions imposed, if any, including the reasons for any sanctions; and
 - the right to appeal.
- (d) the Monitoring Officer shall arrange for the distribution of the formal written notice within two weeks of the close of the hearing, to:
- the Member;
 - the Standards Board
 - the Investigating Officer and/or the ESO;
 - the members of the Standards Committee;
 - the Standards Committee of any local authority concerned;
 - any Parish Council concerned;
 - the person who made the allegation.
- (e) Subject to paragraph 9(d) if the Member had not failed to follow the Code of Conduct, the Monitoring Officer shall arrange for a summary of the notice (which shall include the information required by Regulation 20) to be published in one or more newspapers independent of the council and circulating in the area and (in both cases at the discretion of the Hearing Panel) on the Council's website and in any other publication.

13 Appeals

The Member may seek permission to appeal against the decision of the Hearing Panel and, if appropriate, apply for suspension of any sanction imposed until such time as any appeal is determined, by giving written notice to the President of the Adjudication Panel for England, ensuring that his/her notice sets out

- (a) the finding against which he/she seeks to appeal;
- (b) whether the appeal is against the finding of failure to comply

with the Code of Conduct, the sanction imposed or both;

(c) the grounds of the appeal;

(d) whether any application for suspension of any sanction is made;
and

(e) whether or not he/she consents to the appeal being conducted
by way of written representations.

The notice must be received by the President within 21 days of the
Member's receipt of the notification of the finding under Paragraph
13(a).

APPENDIX A

Sanctions

1. Available sanctions

The sanctions which are available to the Hearing Panel under the Standards Committee (England) Regulations 2008 are any of the following either individually or in combination:

- (i) censure of that Member (which is the only sanction that may be imposed for a person who has ceased to be a member);
- (ii) restriction for a period not exceeding six months of that Member's access to the premises of the authority or that Member's use of the resources of the authority, provided that such restrictions imposed upon the Member -
 - (a) are reasonable and proportionate to the nature of the breach; and
 - (b) do not unduly restrict the person's ability to perform his functions and duties as a member.
- (iii) partial suspension of that Member for a period not exceeding six months;
- (iv) suspension of that Member for a period not exceeding six months;
- (v) that the Member submit a written apology in a form specified by the Hearing Panel;
- (vi) that the Member undertakes such training as the Hearing Panel specifies;
- (vii) that the Member participate in such conciliation as the Hearing Panel specifies;
- (viii) partial suspension of the Member for a period not exceeding six months or until such time the Member submits a written apology in a form specified by the Hearing Panel;
- (ix) partial suspension of the Member for a period not exceeding six months or until such time as the Member has undertaken such training or has participated in such conciliation as the Hearing Panel specifies;
- (x) suspension of the Member for a period not exceeding six months or until such time as the Member has submitted a written apology in a form specified by the Hearing Panel;
- (xi) suspension of the Member for a period not exceeding six months or until such time as the Member has undertaken such training or has participated in such conciliation as the Hearing Panel specifies.

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

2. Considering the sanction

(i) General

In deciding what action to take, the Hearing Panel should bear in mind the aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the Hearing Panel should be designed both to discourage or prevent the Member from any future non-compliance and also to discourage similar action by others.

The Hearing Panel should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

(ii) Questions to be considered

When deciding on a sanction, the Hearing Panel should ensure that it is reasonable and proportionate to the subject Member's behaviour. Before deciding what sanction to issue, the Hearing Panel will consider the following questions, along with any relevant circumstances:

- What was the Member's intention?
- Did the Member know that they were failing to follow the Code of Conduct?
- Did the Member get advice from officers before the incident and if so, was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial irregularity, for example improper expense claims or procedural irregularities?
- What was the result of the failure to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Member accept that they were at fault?
- Did the Member apologise to any relevant people?
- Has the Member failed to follow the Code of Conduct before?
- Is the Member likely to do the same thing again?

- How will the sanction be carried out? For example, in the case of training or conciliation, who will provide that training or conciliation?
- Are there any resource or funding implications? For example, if a subject Member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the subject Member.

(iii) Mitigating and aggravating factors

The Hearing Panel will also take into account any aggravating or mitigating factors. The following are given by way of example only and are not intended to be an exhaustive list. Mitigating factors may include:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- A Member's previous record of good service.
- Substantiated evidence that the Member's actions have been affected by ill-health.
- Recognition that there has been failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where appropriate; self-reporting of the breach by the Member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Aggravating factors may include:

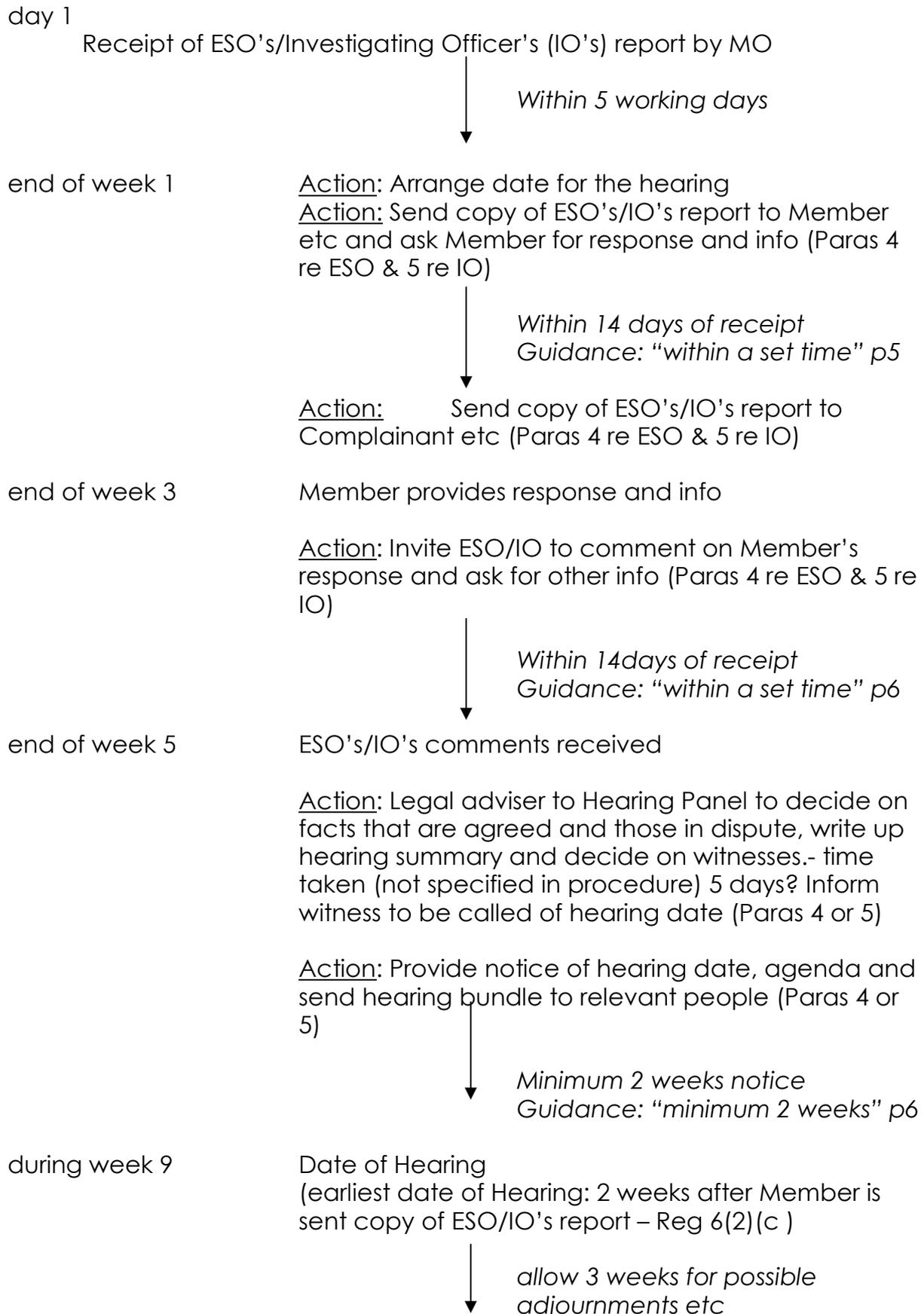
- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

(iv) Miscellaneous

- Suspension may be appropriate for more serious cases, such as those involving:
 - trying to gain an advantage for themselves or others;
 - dishonesty or breaches of trust;
 - bullying.

- Sanctions which involve restricting access to the Council's premises or equipment should not unnecessarily restrict the Member's ability to carry out their responsibilities as an elected representative or co-opted member.

Appendix B - Time line for local determination procedure



end of week 12

Hearing must be completed within 3 months of receipt of ESO's report – Reg 6(2)(b)

Appendix C: Hearing Process

- Introductions & explanation of procedures
- Preliminaries: disclosures of interest, quorum, confirm hearing procedure
- Decision as to whether to proceed in absence of Member (if applicable)
- Decision as to exclusion of press and public
- Member confirms whether maintaining position
- Legal adviser or Democratic Services Officer presents Pre-Hearing Summary Report
- Member confirms whether accurate summary of issues, identifies any additional points where disagrees with findings of fact in Investigation Officer's Report and or admits failure to comply with Code of Conduct.
- If Member admits failure to comply with Code of Conduct, Hearing Panel may make a determination accordingly and proceed directly to consider whether any action to be taken.
- If Member identifies additional points of difference, Chair asks Member to explain why not identified as part of the Pre-Hearing Process and decide on what basis to proceed or whether to adjourn hearing.
- Investigating Officer presents report if present and calls witnesses as necessary. If Investigating Officer absent, Hearing Panel determines whether to conduct hearing and calls witnesses as necessary.
- At conclusion of report and/or each witnesses' evidence, Hearing Panel consults Member as to whether it should seek the advice of the Investigating Officer or the relevant witness.
- Chair invites Member to respond to the Investigating Officer's report and to call any witnesses as necessary.
- At the conclusion of Member's evidence and/or of the evidence of each witness, Chair asks Investigating Officer if there are any matters upon which the Hearing Panel should seek the advice of the Member or the witness.
- At the conclusion of all evidence, Chair checks that members of the Hearing Panel are satisfied they have sufficient evidence to come to a considered conclusion.
- Hearing Panel retires to consider determination (unless determination will merely confirm Member's admission of a failure to comply with the Code

of Conduct) and whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.

- Hearing Panel may, at any time, return to the main hearing room in order to seek additional evidence or legal advice. If it requires any further information, it may adjourn on not more than one occasion and instruct an officer or request the Member to produce such further evidence to the Hearing Panel.
- Hearing Panel returns to main hearing room and Chair states Hearing Panel's principal findings of fact and its determination.
- If Hearing Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report, Chair announces Hearing Panel's decision, any decision of whether to refer other potential failures, any other recommendations and checks whether Member objects to publication of a summary of the complaint.
- If Hearing Panel determines Member has failed to follow the Code of Conduct:
 - Chair may take advice on appropriate sanction
 - Member responds
 - Chair ensures all members of Panel have sufficient information to decide on sanction
 - Panel retires to consider whether to impose sanction and any recommendations.
 - On return, Chair states decision (with principal reasons) as to whether a sanction should be imposed, the nature of any sanction, and states any recommendations.
- Hearing Panel provides Democratic Services Officer with short written statement of its decision, which Democratic Services Officer delivers to Member as soon as practicable after the close of the hearing
- Chair thanks all those present who have contributed to the conduct of the hearing and formally closes the hearing.
- Following close of hearing Democratic Services Officer agrees formal written notice of the Hearing Panel's determination in draft form.
- Monitoring Officer arranges for distribution of formal written notice within two weeks of the close of the hearing,

- Monitoring Officer arranges for summary of notice to be published.

NB: If Hearing Panel is considering a report referred by an ESO it may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request, with reasons, to the ESO concerned that the matter be referred back to the ESO for further investigation. If the request is accepted, the Hearing Panel shall cease its consideration of the matter. If it is not accepted, the Hearing Panel shall continue its consideration of the matter and make no further such requests. If the Hearing Panel is considering a report prepared by the Monitoring Officer (or a person appointed by him), it may at any stage prior to the conclusion of the hearing adjourn the hearing and, on one occasion only, require the Monitoring Officer to seek further information or undertake further investigation on any point specified by it.



Procedure for Local Investigation of Allegations of Member Misconduct

Procedure for Local Investigation of Allegations of Member Misconduct

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Introduction and Summary

This document sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members¹ and applies to breaches of the authority's Code of Conduct for members. It takes into account the statutory provisions in the Local Government Act 2000 (as amended), the Standards Committee (England) Regulations 2008 and the statutory guidance issued thereunder.

The procedure applies where an allegation that a Member has breached the authority's Code of Conduct for Members has been referred for investigation to the Authority's monitoring Officer by an Assessment Panel or Assessment Review Panel of the authority or by an Ethical Standards Officer of the Standards Board for England.

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 or to a Sub-Committee of the Standards Committee convened for the purpose².

Where the Investigating Officer has completed the investigation, the Hearing Panel must meet and has three initial findings that it can make under Regulation 17 of the Standards Committee (England) Regulations 2008. If the Investigating Officer has found there has been no failing on the part of the Member, it can accept that finding. If the Hearing Panel decides not to accept that finding or if the Investigating Officer has found there was a failing on the part of the Member, there are two alternative findings that can be made. These are either to proceed to a formal hearing of the matter by the authority's Hearing Panel, or to refer the matter to the Adjudication Panel for England. The limited circumstances in which the matter may be referred to the Adjudication Panel are set out below in part **???** of this Procedure.

The purpose of a formal hearing by the Hearing Panel or Adjudication Panel is to determine whether a breach of the authority's Code of Conduct for Members has occurred and if so whether any action should be taken in consequence.

¹ 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 the word "Member" is to be taken to refer to all such persons.

² The City Council's Standards Committee has determined that individual allegations shall be considered by Sub-Committees called Hearing Panels. References in this procedure to the Hearing Panel should be read as being references to the relevant Sub-Committee.

In these processes, 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 Hearing Panel (or exceptionally the Adjudication Panel), to enable the Panel to come to an informed decision as to whether the Member has failed to comply with the authority's Code of Conduct for Members and upon any consequential action. The Hearing Panel acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member 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.

The Monitoring Officer may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is desirable and does not conflict with statutory requirements.

1 Interpretation

- (a) "Assessment Panel" includes the Assessment Review Panel, the role of these Panels being to assess complaints about alleged breaches of the Code of Conduct and decide what action, if any, should be taken.
- (b) "Code of Conduct" means the Code of Conduct for Members.
- (c) "ESO" means an Ethical Standards Officer.
- (d) "Member", except where the context otherwise requires, means the elected member or co-opted member of the authority who is the subject of the allegation that he/she has breached the Code of Conduct. It also includes the Member's nominated representative.
- (e) "Investigating Officer" means, as appropriate to the circumstances, the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative) or the ESO who has referred a matter for investigation to the authority (and his or her nominated representative).
- (f) "the Matter" is the subject matter of the Investigating Officer's report.
- (g) "The Hearing Panel" refers to the Standards Sub-Committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct.

2 Notification of Reference of Allegation to the Monitoring Officer

(a) Appointment of Investigating Officer

Upon receipt of an allegation for investigation, 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 Hearing Panel. The Investigating Officer may be an officer of the authority³, an officer of another local authority, or an external Investigating Officer. In relation to an allegation referred by an ESO, if the Investigating Officer is other than the Monitoring Officer, the

³ The Role of the Investigating Officer must be kept distinct from the roles of committee support officer and legal adviser to the Hearing Panel. The Investigating Officer must be a different person from the person or persons who act as committee support officer and/or legal adviser to the Hearing Panel in respect of the allegation.

Monitoring Officer shall inform the ESO of the name and address of the person to whom the investigation has been delegated.

Subject to the agreement of the Monitoring 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 Member

Subject to any direction from the Assessment Panel or an ESO, the Monitoring Officer will then notify² in writing the Member against whom the allegation is made:

- (i) that the allegation has been referred to him/her for local investigation and determination;
- (ii) the identity of the person making the allegation;
- (iii) of the conduct which is the subject of the allegation;
- (iv) of the section(s) of the Code of Conduct which appear to him/her 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 Member with a copy of any report received from the ESO (see also 2(f) below).

(c) Notification to the Standards Committee and other bodies

Subject to any direction from the Assessment Panel or an ESO, at the same time as notifying the Member, the Monitoring Officer will notify:

- (i) each member of the Standards Committee; and
- (ii) the Standards Committee of any other authority concerned;

in writing, under a requirement for confidentiality, of the matters set out in paragraphs 2(b)(i), (iii), (iv) and (vi) above.

(d) Notification to the Parish Council Clerk

Where the allegation relates to the conduct of a member of Rottingdean Parish Council in his/her capacity as such, at the same time as notifying the Member, the Monitoring Officer will notify the Clerk (or if the Clerk is involved in the allegation, the

² In exceptional cases, where there is reason to believe that it would be contrary to public interests or would prejudice any a person's ability to investigate the allegation there is power to defer notifying the Member.

Chairman) of the Parish Council in writing, under a requirement for confidentiality, of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Notification to the person who made the allegation (the Complainant)

Subject to any direction from the Assessment Panel or an ESO, at the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i), and (iii) to (vi) above and will provide any directions that can be made regarding the forthcoming investigation.

(f) Initial response of the Member

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

- (i) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (ii) listing any documents which the Member 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 Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and,
- (iv) providing the Investigating Officer with any details of information which the Member would wish the Investigating Officer to seek from any person or organisation.

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

In notifying the person who made the allegation as above, the Monitoring Officer will request him/her 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 Complainant would wish the Investigating Officer to interview in the course of any investigation of the allegation; and,
- (iii) providing the Investigating Officer with details of any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.

3. Conduct of the 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 Hearing Panel a report which, together with any report provided by the ESO, will provide the Hearing Panel with sufficient information to determine whether the Member has acted in breach of the Code of Conduct and, where there has been a breach of the Code of Conduct, whether any action should be taken in respect of the Member 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 Hearing Panel and to enable the Hearing Panel 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 evidence which appears to him/her to indicate a breach of the Code of Conduct by the Member other than the breach which he/she is currently

investigating, the Investigating Officer. If this happens, the Investigating Officer shall take one of the following two courses of action.

- (i) The Investigating Officer may inform the person from whom the evidence was obtained that the possible breach cannot be investigated as part of the existing investigation, and that they may wish to make a separate complaint to the relevant standards committee.
- (ii) Alternatively, the Investigating Officer may report the matter to the Monitoring Officer who will provide the Member with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Member 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.

(d) Identification of those people from whom the Investigating Officer will seek information

Following notification to the Member, 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 Member has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(f)(ii) to (iv) 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 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 information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary or expedient 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 other authority to provide such advice or assistance as he/she thinks may reasonably be needed for the purposes of carrying out the investigation. (Note: the authority concerned, or in the case of a Parish Council, the authority responsible for that Parish Council, can be required to meet the reasonable cost of any advice and assistance so provided).

(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 can 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 or the Assessment Panel

- (i) In relation to any allegation referred by an ESO for investigation, at any point in the course of the investigation, if the Investigating Officer is of the opinion
- (A) 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 Hearing Panel, or
 - (B) during the course of the investigation new evidence has been uncovered of the conduct of the Member that breaches the Code of Conduct but that the new evidence extends the scope of the investigation beyond the allegation referred by the ESO
 - (C) that the Member is obstructing the investigation by refusing to co-operate or
 - (D) that there is some other substantial reason,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the ESO with reasons in writing to resume his/her investigation of the matter³.

Where the ESO does resume his/her investigation, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint, the members of the Standards Committee and the Parish Council (if appropriate) is informed of such resumption. Where the ESO declines to resume his/her investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

- (ii) In relation to any allegation referred by an Assessment Panel for investigation, at any point in the course of the investigation, the Investigating Officer may suspend his/her investigation and refer the matter to the Monitoring Officer if he/she is of the opinion
- (A) that as a result of new evidence or information, the matter is materially more serious or materially less

³ Only one such request may be made during the course of an investigation

serious than may have seemed apparent to the Assessment Panel when it referred the matter to the Monitoring Officer for investigation, and that the Panel would have made a different decision had it been aware of that new evidence or information, or

- (B) that the Member has died, or is seriously ill, or has resigned from the authority concerned and that in the circumstances it is no longer appropriate to continue with the investigation.

In forming an opinion under paragraph (ii)(A) above, the Investigating Officer may take account of the failure of any person to co-operate with the investigation, 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.

For the purposes of paragraph (ii)(B) above, a Member is “seriously ill” if they are suffering from a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. The Investigating Officer will establish this by evidence from a reliable independent and authoritative source other than the Member.

The Monitoring Officer may refer the matter back to the Assessment Panel for re-determination, or may require the Investigating Officer to continue with the investigation, If the matter is referred for re-determination, the Monitoring Officer will instruct the Investigating Officer as appropriate in the light of the decision of the Assessment Panel.

(i) Deferral of investigation

- (i) If at any point during the investigation the Investigating Officer becomes aware that in relation to the Member’s conduct:
 - (A) there are ongoing criminal proceedings or a police investigation;
 - (B) there is an ongoing investigation by another regulatory body;

- (C) there is some other investigation or court proceeding taking place; or
- (D) a key party in the investigation is seriously ill or unavailable for some substantial reason

he or she will take the following actions.

- (ii) The Investigating Officer will
 - (A) make such enquiries as are necessary to ascertain the nature and extent of any investigation or proceedings referred to in sub-paragraphs (i)(A) to (i)(C) above, and/or the nature of the illness or reasons for unavailability of the key party referred to in sub-paragraph i(D);
 - (B) inform the Monitoring Officer:
 - that circumstances have arisen that may require the investigation be deferred;
 - of the nature and extent of those circumstances; and
 - if applicable, of any areas where in the opinion of the Investigating Officer it would be possible to continue the investigation without overlap with another investigation; and
 - (C) inform the Member that circumstances have arisen which may require that the investigation be deferred.
- (iii) Where the Monitoring Officer receives a reference from the Investigating Officer under sub-paragraph (i)(ii)(B), he or she will take a decision as to whether the investigation should be deferred. In reaching that decision the Monitoring Officer will apply the principles set out below.
- (iv) The investigation **will** be deferred where:
 - (A) There are ongoing criminal proceedings or a police investigation into the Member's conduct;
 - (B) The investigation cannot proceed without investigating similar alleged conduct or needing to come to conclusions of fact about events which are

also the subject of some other investigation or court proceeding; or

- (C) Continuing with the investigation might prejudice another investigation or court proceeding.

The investigation **may** be deferred where:

- (D) There is an ongoing investigation by another regulatory body; or

- (E) A key party in the investigation is seriously ill or unavailable for some substantial reason.

- (v) Where an investigation is being conducted by another body but none of sub-paragraphs (i)(iv)(A) to (C) applies, the Monitoring Officer may decide that, if possible, the investigation should be conducted in parallel with that other body. In such a case the Investigating Officer will take such steps as are necessary to ensure the investigations are co-ordinated. The Monitoring Officer may also refer the investigation to the Standards Board for England if in his or her opinion this would allow closer cooperation between the investigators.
- (vi) The Monitoring Officer may decide that the investigation will proceed only in relation to those areas of the alleged misconduct which are not subject to any other investigation or proceedings. In such circumstances the other part of the investigation will be deferred.
- (vii) When a decision is taken to defer or refer an investigation or parts thereof, the Monitoring Officer shall inform in writing:
- the Member;
 - the complainant
 - the standards committee of any other authority concerned; and
 - if the allegation relates to the conduct of a Member of Rottingdean Parish Council, the Clerk (or if the Clerk is involved in the allegation, the Chairman) of the Parish Council.
- (viii) The Monitoring Officer will keep any decision to defer an investigation under regular review, and will ask the police

or any other relevant organisation or individual to keep him or her informed of the progress of any police or other investigation or proceedings.

- (ix) When a decision has been taken to resume the investigation, the Monitoring Officer shall inform in writing those persons mentioned in sub-paragraph (vii).
- (x) Before resuming an investigation which has been deferred, the Investigating Officer shall review the investigation plan in light of the outcome of any other investigation or proceedings.

(j) Confidentiality

The Investigating Officer shall as necessary request that people interviewed and anyone else aware of the investigation process maintain confidentiality in order to maintain the integrity of the process.

4 The Draft Report

- (a) Prior to issuing the draft report the Investigating Officer shall send a copy of a statement to each witnesses or party interviewed, on whose evidence he/she will rely in compiling the draft report, and request that they confirm their statement and send any comments thereon to him/her within 14 days.

- (b) 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 dated report, marked confidential, setting out:
- (i) the details of the allegation;
 - (ii) the relevant provisions of statute and of the Code of Conduct;
 - (iii) the Member'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 and reasoning for these;
 - (ix) his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct for Members, and
- (c) The draft report 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 Hearing Panel once he/she has considered any comments received on the draft report.
- (d) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Member and the person making the allegation, for comment and request that they send any written comments thereon to him/her within 14 days.
- (e) The Investigating Officer will not send the draft report to any witness or to the relevant Parish Council.

- (f) Responses to the draft report from the Member or the Complainant may reveal the need for further investigation. If that further investigation results in significant changes being made the Investigating Officer may decide to issue a further draft report to the Member and the Complainant.

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 dated report. The final report shall include a finding either that there has not been a failure to comply with the Code of Conduct or that there has been such a failure. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Hearing Panel, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, including background documents, records of telephone conversations, letters, and statements from interviews of witnesses or other parties etc and may include a chronology of events;
- (b) The Monitoring Officer shall then send a copy of the final report to the Member, advising that the Monitoring Officer will refer the report to the Hearing Panel for their consideration and an initial finding under Regulation 17. The Member will at the same time be sent a note explaining the three alternative findings that the Hearing Panel may make under Regulation 17.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Hearing Panel is sent out to members of the Hearing Panel, that they also receive a copy of the final report. The agenda and the report shall also be sent to:
 - (i) The person who made the complaint;
 - (ii) The Clerk to the Parish Council (if relevant); and
 - (iii) In relation to any allegation referred by an ESO for investigation, the ESO; and
 - (iv) The Monitoring Officer for any other Standards Committee of any other authority of which the Member is a member, if that authority has so requested

together with, in relation to the person who made the complaint, a note explaining the three alternative findings that the Hearing Panel may make under Regulation 17.

- (d) Where the Hearing Panel considers the final report in accordance with Regulation 17, it shall make one of the following findings:
- (i) That it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct as set out in the allegation;
 - (ii) That the matter should be considered at a hearing of the Hearing Panel (which will be conducted in accordance with the authority's adopted Procedure for Local Determination Hearings)⁴; or
 - (iii) That the matter should be referred to the Adjudication Panel for determination, but the Hearing Panel may only make such a finding if (1) the Hearing Panel first determines that the action it could take against the Member would be insufficient were a finding of failure to be made and (2) the President or Deputy President of the Adjudication Panel has agreed to accept the referral.
- (e) Where the Hearing Panel finds as set out in Paragraph 5(d)(i) above (no failure to comply with the Code of Conduct), the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, to:
- (i) The Member;
 - (ii) In relation to any allegation referred by an ESO for investigation, the ESO;
 - (iii) The Standards Committee;
 - (iv) The Monitoring Officer for any other Standards Committee concerned;
 - (v) The Clerk of any Parish Council concerned; and
 - (vi) The person who made the allegation.

⁴ Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members, but simply that, on the basis of the Investigating Officer's report, the Hearing Panel is not at this stage prepared to come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.

and shall ask the Member whether he or she objects to the publication in at least one local newspaper and (in both cases at the discretion of the Hearing Panel) on the authority's website and in any other publication of a notice that there has been no failure to comply with the Code of Conduct, and arrange for the publication of such a notice in the local newspaper and otherwise as directed by the Hearing Panel unless the Member so objects.

- (f) Where the Hearing Panel finds as set out in Paragraph 5(d)(ii) above (that the matter should be considered at a formal hearing) the Monitoring Officer will arrange for the matter to be considered at a hearing of the Hearing Panel which will be conducted under the authority's adopted Procedure for Local Determination Hearings.
- (g) Where the Hearing Panel finds as set out in Paragraph 5(d)(iii) above (that the matter should be referred to the Adjudication Panel) the Monitoring Officer will arrange to refer the matter to the President or Deputy President of the Adjudication Panel as appropriate.