

Allegations of Misconduct by Councillors

Procedure for Local Investigation and Determination of Allegations against Councillors

(England)

1 Introduction and Summary

This note sets out the procedure which will be followed in the local investigation and determination of allegations of misconduct by Councillors'. No departure will be made from this procedure unless and until the Monitoring Officer² has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

Where the Standards Board for England receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Board refers the allegation to an Ethical Standards Officer for investigation³. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the authority's Monitoring Officer (*or in the case of a Parish or Town Council, to the Monitoring Officer of the local District or Unitary Authority*⁴⁵). 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 Committee⁶ (*or to a Sub-committee of the Standards Committee convened for the purpose*⁷), which will then hold a formal hearing to determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence⁸.

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 by the directly elected mayor of the authority (if any), and the word "Councillor" is to be taken to refer to all such persons.

² The "Monitoring Officer" is an officer of the Council who has been designated as the authority's Monitoring Officer under section 5 of the Local Government and Housing Act 1989

³ Section 58(2), Local Government Act 2000.

⁴ Where this procedure relates to a District or Unitary Authority's responsibilities in respect of a Parish or Town Council, it refers to the District or Parish Council as the Principal Authority.

⁵ Delete italicised text if inappropriate.

⁶ Section 59(4)(c), Local Government Act 2000.

⁷ Where an authority determines that individual allegations shall be considered by a Sub-committee, or Regulations require that a complaint be considered by a Sub-committee, references in this procedure to the Standards Committee should be read as being references to such a Sub-committee.

⁸ In drafting this model procedure, consideration has been given to whether it might be possible to have an abbreviated procedure for "trivial" complaints, or those where the Investigating officer concludes that no breach of the Code of Conduct has occurred, or no action is required. However, I concluded that there was a real public interest in ensuring that each complaint **was** formally investigated, reported to Standards Committee, and adjudicated on by the Committee. Such a requirement removes any scope for an inconvenient complaint to be treated informally, or even lost. It also means that the member against whom the complaint is made will, if there **is** no substance in the complaint, be formally

In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to **an** informed decision as to whether the Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, and upon **any** consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and able to commission further investigation or information where it needs to do so in order to come to **a** decision.

In addition, authorities may supplement their Code of Conduct for Members with local protocols which do not form part of the Code of Conduct. Allegations **of** breach of a local protocol are not within the jurisdiction of the Standards Board but fall to **be** investigated and determined by the authority concerned.⁹ Accordingly this procedure will apply equally to allegations of breach of a local protocol.

Where the Standards Committee determines, after considering that investigation report, that there appears to have been a breach of the authority's Code of Conduct, the Standards Committee will give the Councillor concerned the opportunity to **make** representations to it before it **makes** any final decision as to whether there has been **a** breach of the authority's Code of Conduct. Where the Standards Committee determines that the Councillor has acted in breach of the authority's Code of Conduct, the Committee will hear representations from the Investigating Officer and from the Councillor as to any action which the Committee should take in respect **of** the Councillor, and will consider whether any action should be taken by the authority to rectify any consequences **of** the misconduct **or** to prevent any further breaches.

The actions which the Standards Committee may take against the Councillor may include censuring the Councillor, suspending or partially suspending the Councillor from being **a** member of the authority for a period not exceeding six months, and the withdrawal of the authority's facilities.

2 **ificati of Reference of | to the Monitoring Officer**

(a) **Appointment of Investigating Officer**

Upon receipt of the allegation from an Ethical Standards Officer, the Monitoring Officer will appoint an Investigating Officer in respect **of** the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the authority's Standards Committee. The

exonerated by the Committee, and the ability **of** the Committee to comment upon the lack of merit of the complaint may act as a disincentive to anyone considering making an unmeritorious complaint. Where the complaint has no merit, each stage of the process will still need to be completed, but some stages would become purely formal and can then be completed more quickly.

⁹ Normally authorities will have delegated to their Standards Committees the **power** to deal with such matters. District Councils' Monitoring Officers and Standards Committees have **no** jurisdiction over allegations of breach of local protocols by Parish **and** Town Councillors, which would have to be dealt with by the Parish or town Council concerned, unless the District Council has agreed to accept delegated jurisdiction in respect of the particular complaint.

Investigating Officer **may** be an officer of the authority¹⁰, an officer of another local authority, or an external investigator.

The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions.

(b) Notification to the Councillor

The Monitoring Officer will then notify¹¹ in writing the Councillor against whom the allegation is made:

- (i) that he/she has received the allegation;
- (ii) of the name and address 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 or local protocol which are alleged to have been breached by the Councillor;
- (v) of the procedure which will be followed in respect of the allegation, and
- (vi) of the identity of the Investigating Officer.

(c) Notification to the Standards Committee

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

(d) *Notification to the Parish or Town Council Clerk*

Where the allegation relates to the conduct of a member of a Parish or Town Council in his/her capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish or Town Council concerned in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Initial response of the Councillor

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

¹⁰ There are two distinct roles, that of the Investigating Officer and that of legal adviser to the Standards Committee. The Monitoring Officer **may** him/herself take on the role **of** Investigating Officer. Where he/she does so, he/she must also arrange for a separate legal adviser to the Standards Committee in respect of the allegation.

¹¹ In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk **of** intimidation **of** witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Councillor.

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

3 Conduct of Investigation

(a) Purpose of the Investigation

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

(b) Termination of the Investigation

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

(c) Additional Matters

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

- (i) *(where the additional matter relates to an apparent breach of the authority's Code of Conduct for Members or to a breach of protocol by a member of the principal authority)* notify the Councillor concerned in writing of the other matter, providing details in the form set out in paragraphs 2(b)(iii) and (iv) above and seek the consent of the Councillor in writing within 14 days of notification to the other matter

being investigated and dealt with by the Investigating Officer and the Standards Committee as if it were part of the original allegation, or

(ii) where the Councillor has refused consent as set out in paragraph 3(c)(i) above or failed to provide such consent within 14 days of being so notified, or where the Investigating Officer is of the opinion that the other matter should be dealt with separately from the original allegation, the Investigating Officer shall provide details of the suspected further breach to the Monitoring Officer who shall then arrange for the separate investigation of that additional allegation and report to the Standards Committee or the Standards Board as appropriate.

(iii) *(Where the additional matter relates to an apparent breach of protocol by a Parish or Town Councillor) notify the Clerk to the Town or Parish Council of the additional matter, and take no further action in respect thereof*¹².

(d) Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(e)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation is intended to delay the completion of the investigation rather than to contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

(e) Production of documents, information and explanations

In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person, and request any person to provide any document, information or explanation, as he/she thinks necessary for the purposes of carrying out the investigation.

(f) Interviews

(i) Requesting attendance

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

(ii) Representation

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As set out above, District Council Standards Committees have no jurisdiction in respect of breaches of local protocols by Parish and Town Councillors, which would have to be dealt with by the parish or Town Council itself unless the Parish or Town Council has delegated the resolution of such matters to the District Council.

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

- (iii) Notes of interviews
- (iv) Where practicable, following the interview the Investigating Officer shall produce a written note or 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.¹³

(h) Reference back to the Standards Board

At any point in the course of the investigation, if the Investigating Officer is of the opinion that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, he/she may, after consulting the Monitoring Officer (if separate) suspend his/her investigation and refer the matter together with any supporting information to the Standards Board for England, and shall then report the fact of that reference to the next convenient meeting of the Standards Committee.

4 Report

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

¹³ Regulation 4(5), Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) 2001, S.I. 2001 No. 2281

- (v) a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
 - (vi) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate; and
 - (vii) a statement of his/her draft findings of fact.
- (b) The Investigating Officer shall then send a copy of his/her draft report to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 10 days
- (c) After the expiry of that period (or such extended period as the investigating Officer may allow), the Investigating Officer shall reconsider his/her draft report in the light of any comments received and shall produce and send to the Proper Officer¹⁴ a final report which shall include those matters set out in Paragraph 4(a) above together with the following matters:
- (i) a statement of his/her conclusions;
 - (ii) a recommendation to the Standards Committee as to whether the Councillor has breached the Code of Conduct or local protocol in the matter set out in the allegation or in respect of any other matter which he/she has determined to investigate as if it were a part of the original allegation, together with a statement of the reasons for making that recommendation;
 - (iii) a recommendation as to what action (if **any**) the Standards Committee should take against the Councillor, together with a statement of the reasons for making that recommendation, and
 - (iv) any other recommendations which he/she proposes to make to the Standards Committee arising out of the investigation, for example ***for providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or local protocol or related matters,***¹⁵ for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol. ***Where the allegation relates to a Parish or Town Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards***

¹⁴ The Proper Officer is the officer of the authority who is charged with making arrangements for the meeting of the Standards Committee, and for recording the proceedings.

¹⁵ Individual authorities may wish to consider whether they wish to provide for such recompense, and provide a delegated power to the Standards Committee for this purpose. A breach of the authority's Code of Conduct, as a failure to comply with the authority's own rules, is likely also to constitute maladministration, and enable an authority to make a payment to any person who has suffered loss or injustice as a consequence of the breach of the Code, under Section 92(1) of the Local Government Act 2000.

Committee make to the Parish or Town Council.

- (d) At the same time, the Investigating Officer shall send to the Proper Officer a list of all background documents including any notes of interviews which he/she has relied upon in preparing the report, together with copies of any such documents as are in his/her possession and which can conveniently be so copied. The Investigating Officer may at his/her discretion delete or obscure any parts of such interview notes as have not been relied upon in the preparation of his/her report.
- (e) The Proper Officer shall then arrange a time and date for the Standards Committee to meet and consider the matter.
- (f) At least 20 clear days before the date of the meeting of the Standards Committee, the Proper Officer shall
 - (i) send a copy of the Investigating Officer's final report to the Councillor;
 - (ii) notify the Councillor of the date, time and place of the meeting of the Standards Committee at which the matter will be considered;
 - (iii) advise the Councillor of the procedure which will be adopted by the Standards Committee at that meeting.
 - (iv) (Where the Investigating Officer's report recommends that a breach of the Code of Conduct or local protocol has occurred) request the Councillor within **10** days of receipt of the report to provide the Proper Officer with a written statement in which the Councillor sets out his/her response to the report, and which the Councillor wishes to be sent to the members of the Standards Committee at the same time as the report;
 - (v) (Where the Investigating Officer's report recommends that a breach of the Code of Conduct or local protocol has occurred) request that Councillor to identify in that written statement any matter contained in the Investigating Officer's report which the Councillor proposes to dispute at the meeting of the Standards Committee, in order to enable the Investigating Officer to arrange the attendance at the meeting of the Standards Committee of any witnesses necessary to evidence that matter which the Councillor wishes to dispute;
 - (vi) (Where the Investigating Officer's report recommends that a breach of the Code of Conduct or local protocol has occurred) advise the Councillor that, if he/she seeks at the meeting of the Standards Committee to dispute any matter contained in the Investigating Officer's report without having previously identified it in his/her written statement as a matter which he/she proposes to dispute, the Standards Committee may either adjourn the meeting to enable the Investigating Officer to arrange the attendance at the meeting of the Standards Committee of any witnesses necessary to evidence that matter or refuse to allow the Councillor to dispute that matter and take

their decision on the basis of the matter as set out in the Investigating Officer's report.

5 Committee Agenda and Reports

(a) Committee agenda and reports

At least 5 clear days before the day of the meeting of the Standards Committee, the Proper Officer will send to each member of the Standards Committee, to the Councillor, to the Investigating Officer and to any person who made the allegation which gave rise to the investigation¹⁶, but may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until such time as the Proper Officer makes the report available to the press and public or the Standards Committee agree that the press and public shall not be excluded from the meeting.:

- (i) the agenda for the meeting of the Committee;
- (ii) a copy of the Investigating Officer's report, and
- (iii) a copy of any written statement in response to the report which **has** been received from the Councillor.

At the same time the Proper officer will write to the Councillor and to the Investigating Officer and advise them that, at the commencement of the meeting, the Committee will consider whether the press and public should be excluded from the meeting¹⁷.

(b) Background papers

The Proper Officer will, upon request, provide or arrange **for** any member of the Committee or Sub-Committee (as appropriate) **and** the Councillor to have access to any background documents as have been identified or supplied by the Investigating Officer at any reasonable time between the issue of the agenda and the time of the meeting.

(c) Confidentiality in advance of the Meeting

- (i) Where the Proper Officer considers that the Investigating Officer's report and/or the Councillor's written statement in response is likely **to** disclose "exempt information"¹⁸, and in consequence that it is likely that the Committee or Sub-Committee will, during consideration of these papers, not be open to the public, he/she shall not provide copies of these papers to the press or public or permit inspection thereof by the press or public in advance of the meeting.

¹⁶ Regulation 6(c), Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) 2001, S.I. 2001 No. 2281

¹⁷ Section 100A of the Local Government Act 1972. A note of the issues which the Committee will have to consider in deciding whether to exclude the press and public is set out in Appendix Two.

¹⁸ "Exempt information" is defined in Schedule 12A to the Local Government Act 1972, see Appendix One.

- (ii) Where the Proper Officer considers that that the Investigating Officer's report and/or the Councillor's written statement in response is likely to disclose "exempt information" falling within Paragraphs 1 to 6, 9, 11, 12 or 14 of Schedule 12A to the Local Government Act 1972, he/she shall not provide copies of these papers to, nor permit inspection thereof by, any member of the authority other than the members of the Committee and the Councillor in advance of the meeting.

6 Procedure at the Meeting

- (a) Attendance of the Councillor
 - (i) The Councillor may arrange to be accompanied at the meeting at his/her own expense by a solicitor, counsel or friend¹⁹.
 - (ii) If the Councillor is not present at the start of the meeting, the Committee shall decide whether to adjourn to enable the Councillor to attend, or to proceed in the absence of the Councillor. Where the Committee proceeds in the absence of the Councillor, the procedure for the meeting shall be adapted as necessary, giving any representative of the Councillor who is present such rights as would otherwise be accorded to the Councillor.

- (b) Order of business

The order of business at the meeting shall be as follows:

- (i) Quorum. The Proper Officer or his/her representative shall confirm that the Committee is quorate;
- (ii) introduction of the Committee, Proper Officer (or his/her representative) the legal adviser to the Committee, the Investigating Officer and the Councillor and any representative of the Councillor;
- (iii) disclosures of interest;
- (iv) representations from the Investigating Officer and the Councillor as to reasons why the Committee should exclude the press and public and determination by the Committee as to whether to exclude the press and public (where the Committee decides that it will not exclude press and public, the Proper Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present);
- (v) presentation by the Investigating Officer of his/her report. The Investigating Officer shall at this stage address only the issue of whether the Councillor has acted in breach of the Code of Conduct or local protocol. The Investigating Officer may introduce any witnesses

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Under Section 101 of the Local Government Act 2000, the Secretary of State may make regulations which can provide for an authority to meet some or all of the Councillor's cost of legal representation. At the time of writing no such regulations have been made.

required to substantiate any matter contained in that report which the Councillor has disputed in his/her written statement in response. Members of the Committee may question the Investigating Officer and any witness on their evidence. There shall be no cross-examination by the Councillor, but the Councillor may request the Chairman of the Meeting to direct appropriate questions to the Investigating Officer or to any witness whom he/she has introduced;

- (vi) presentation by the Councillor. The Councillor or his/her representative shall at this stage address only the issue of whether he/she has acted in breach of the Code of Conduct or local protocol. The Councillor or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response. Members of the Committee may question the Councillor and any witness on their evidence. There shall be no cross-examination by the Investigating Officer, but the Investigating Officer may request the Chairman of the Meeting to direct appropriate questions to the Councillor or to any witness whom he/she has introduced.
- (vii) Where the Councillor seeks to dispute any matter in the Investigating Officer's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Investigating Officer shall draw this to the attention of the Committee. The Committee may then decide:
 - (A) not to admit such dispute but to proceed to a decision on the basis of the information contained in the Investigating Officer's report;
 - (B) to admit the dispute, but invite the Investigating Officer to respond thereto, recalling any witness as necessary; or
 - (C) to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information ;
- (viii) at the conclusion of the presentation by the Councillor, the Chairman shall ask the Investigating Officer whether there was any matter raised during the course of that presentation which was not raised in the Councillor's written statement in response. The Investigating Officer may then respond to any such new matter, or may request the Committee to adjourn to enable him/her to investigate and report on that new matter and /or to secure the attendance of witnesses as to the new matter;
- (ix) the Committee is required to come to a decision as to whether the Councillor acted in breach of the Code of Conduct or local protocol. Accordingly, they have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Investigating Officer, the Councillor and any witness in order to

obtain sufficient information to enable the Committee to come to a decision on this issue;

- (x) at the conclusion of the presentations of the Investigating Officer and of the Councillor and any questions from the members of the Committee, the members of the Committee will adjourn into another room with the Proper Officer or his/her representative where they will consider in private session whether the member has acted in breach of the Code of Conduct or local protocol. At any stage in their consideration they may return to ask any further questions of the Investigating Officer or the Councillor or to seek legal advice;
- (xi) the Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Investigating Officer and the Councillor²⁰;
- (xii) at the conclusion of their consideration, the Committee will return and the Chairman will advise the Monitoring Officer and the Councillor of their decision as to whether the Councillor has acted in breach of the Code of Conduct or local protocol, and the reasons for that decision;
- (xiii) if the Committee conclude that the Councillor has acted in breach of the Code of Conduct or local protocol, the Committee will then hear representations from the Investigating Officer and then the Councillor as to whether the Committee should take any action against the Councillor and what form any action should take. Members of the Committee may ask questions of the Investigating Officer and the Councillor and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision;
- (xiv) the Committee will then adjourn into another room together with the Proper Officer or his/her representative where they will consider in private session whether to take **any** action against the Councillor and what form such action should take, and will then return and the Chairman will advise the Investigating Officer and the Councillor of their decision as to whether to take any action against the Councillor and what action they have decided to take against the Councillor and the reasons for those decisions;
- (xv) (Where the Committee is considering allegations relating to a member of that authority) The Committee shall then consider in open session whether there are any recommendations which the Committee should make arising from their consideration of the allegation, for example for providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or local protocol or related matters, for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for

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²⁰ See *Clark v Kelly*, TLR 12th February 2003 as authority for the proposition that, even if the Committee receives legal advice in private, that advice must be repeated in open session to give the parties an opportunity to respond to that advice. Since the Committee will have to be present for such advice and responses, it is in practice easier to have all such advice given in open session.

rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol.

- (xvi) (Where the Committee is considering allegations relating to a member of another authority) The Committee shall then consider in open session whether there are any recommendations which the Committee should make to the authority of which the Councillor is a member arising from their consideration of the allegation, for example for providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or local protocol or related matters, for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in that authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol.

(c) Non-Cooperation

Where the Investigating Officer has reported that any officer or Councillor of a local authority has failed to co-operate with the investigation, the Committee shall consider whether to make a formal complaint to the Standards Board in England or to the employing authority **about** such failure to co-operate.

(d) costs

Where the Investigating Officer secures the attendance of any person to give evidence to the Committee, he/she may pay to any such person such fees or allowances as he/she considers to be appropriate subject to the maxima set by the authority.²¹

7 Reporting of the Decision of the Standards Committee

- (a) As soon as practicable after the Committee has completed its consideration and decision in respect of the allegation, the Proper Officer shall:
- (i) send to the Councillor a written notice of the decision of the Committee which statement shall include a statement of any rights of appeal²² against that decision;
 - (ii) send a written report of the decision of the Committee to the next convenient meeting of the Council

²¹ Regulation 4(5), Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) 2001, S.I. 2001 No. 2281

²² It is anticipated that the English Section 66 Regulations will provide a right of appeal to a Case Tribunal against any decision of a Standards Committee on a referred matter, that right to be exercisable by the Councillor concerned within 21 days of the authority sending out the statement of decision and reasons. Such a right of appeal is unlikely to apply to decisions of standards Committees in respect of breaches of the Code of conduct which have not been referred by an Ethical Standards Officer, or breaches of local protocols, as these are outside the scope of Section 66 Regulations.

- (iii) *where the allegation relates to a Councillor in his her capacity as a member of a Parish, Community or Town Council, send a written notice of the decision of the Committee to the Clerk to the Parish, Community or Town Council;*
 - (iv) take reasonable steps to inform any person who any person who made the allegation which gave rise to the investigation²³.
- (b) As soon as possible after the time limit for any appeal by the Councillor against the decision of the of the Committee has expired, and provided that no such appeal has been lodged by the Councillor, the Proper Officer will send a report of the outcome of the investigation and the Committee's decision to the Standards Board in England.

8 Assistance to the Investigating Officer

- (a) The Investigating Officer may arrange for all or any of his/her functions under this procedure to be undertaken by any other person or persons;
- (b) The Investigating Officer may, in conducting the investigation, obtain expert or other advice from any person **who**, in his/her opinion is particularly **qualified to assist**;
- (c) Where the Investigating Officer arranges for the attendance of any person for interview or **as** a witness at the meeting, he/she may pay to that person a sum to cover any reasonable costs which the person may incur in so attending;

9 Confidentiality

- (a) No member or officer of the authority shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out in Paragraph 9(b) below;
- (b) The circumstances referred to above shall be as follows:
 - (i) the disclosure is made for the purposes of enabling the Investigating Officer to conduct the investigation or otherwise to carry out his/her functions or the Standards Committee to carry out its functions in relation to the matter;
 - (ii) the person to whom the information relates has consented to the disclosure;
 - (iii) the disclosure is made in pursuance of a statutory requirement for disclosure;
 - (iv) the information has previously been disclosed to the public with lawful authority;

²³

Regulation 9(3), Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) 2001, S.I. 2001 No. 2281

- (v) the disclosure is made to the Audit Commission for the purposes of any function of the Audit Commission under the Audit Commission Act 1998; or
- (vi) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

Peter Keith-Lucas

Local Government Partner

Wragge & Co

22.11.2002

Appendix One

Grounds for Confidentiality

“Exempt Information”

Paragraph numbers from Schedule **12A** of the Local Government Act **1972**

- 1.* Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office holder or applicant to become an office-holder under, the authority.
- 2.* Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office holder or applicant to become an office-holder appointed by -
 - (a) a magistrates' court committee, or
 - (b) a probation committee.
- 3.* Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
- 4.* Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
- 5.* Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
- 6.* Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
- 9.* Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of any person offering any particular tender for a contract for the supply of goods or services.
- 11.* Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters between the Authority and its employees.
- 12.* Any instructions to counsel and any opinion of counsel and any advice received, information obtained or action to be taken in connection with -

- a) any legal proceedings by or against the authority, **or**
 - b) the determination of any matter, affecting the authority,
13. Information which, if disclosed to the public, would reveal that the authority proposes -
- (a) to serve a statutory notice; or
 - (b) to make a statutory order or direction.
- 14.* Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
15. The identity of a protected informant.

Access to items marked with an asterisk may also be withheld from Councillors.

Appendix Two

Exclusion of Press and Public

Issues for Consideration

1. At the meeting, the Committee will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.
2. The Committee must act in accordance with Article **6** of the Human Rights Act **1998**, which gives a right to a fair and public hearing by an independent and impartial tribunal. Article **6** provides that judgment shall be pronounced publicly, but that the press and public may be excluded from all or part of the “trial” in the interests of
 - a. morals
 - b. public order
 - c. national security in a democratic society
 - d. where the interests of juveniles or the protection of the private life of the parties so require, or
 - e. in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Councillor or the Investigating Officer can demonstrate over-riding reasons within one of these five headings for the press and public to be excluded.

3. Article 8 of the Human Rights Act **1998** provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Committee) with the exercise of this right except such as is:
 - a. in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section **100A** to **100K** of the Local Government Act **1972**), and
 - b. necessary in a democratic society in the interests of
 - i. national security
 - ii. public safety
 - iii. the economic well-being of the country
 - iv. the prevention of crime or disorder

- v. the protection of health and morals (which would include the protection of standards of conduct in public life), or
- vi. the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence therein, so that the presumption of a public hearing set out in Article 6 would apply come within the exception set out in paragraph b.v. above unless either the Investigating Officer or the Councillor demonstrates to the Committee's satisfaction that a public hearing is not necessary for that purpose and that the interest of protecting the privacy of the Councillor or of the authority should over-ride that public interest.

- 4. Where the Committee conclude that the interest of protecting the privacy of the Councillor or of the authority should over-ride the public interest in a public hearing, the Committee remains bound by the provisions of the Local Government Act 1972, as primary legislation, so that it may only exclude press and public from all or part of the meeting if it is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case, the Committee has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
- 5. Where the Committee does not resolve to exclude the press and public from the meeting, the Proper Officer will then be required to provide copies of the agenda and reports to the press and public and other members of the authority, and to permit inspection of the background papers.