



**ISLINGTON**

**STANDARDS COMMITTEE  
PROCEDURES**

**October 2009**

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# INTRODUCTION

- 1 The Standards Committee is responsible for promoting, developing and maintaining high standards of conduct by members and co-opted members of the Council. The Standards Committee also has an important role in taking action in relation to complaints of misconduct by members.
- 2 For some time the committee has been responsible for investigating and/or hearing complaints referred to it by the Standards Board for England. Since 8 May 2008 any complaint of misconduct by a member has to be submitted in the first instance to the Standards Committee rather than to the Standards Board for England (known as Standards for England).
- 3 The Standards Committee now has three distinct functions in relation to complaints of misconduct by members. These are
  - a) Initial assessment of the complaint - The Standards Committee must decide whether to refer to the complaint to the Monitoring Officer for investigation or other action, to refer the complaint to the Standards Board for England for investigation or to take no action in respect of the complaint.
  - b) Review of any decision to take no action - Where the initial assessment is that no action should be taken in respect of the complaint, then the person who submitted the complaint may ask for a review of the decision. The Standards Committee will then be required to make a fresh assessment of the complaint.
  - c) Substantive hearing into the complaint - following an investigation, either by the Standards Board for England or by the Monitoring Officer or his/her nominee, a complaint is to be heard by the Standards Committee, it will be required to act as a quasi judicial body and decide whether there was a breach of the Code of Conduct and if so what the appropriate sanction is.
- 4 The Standards Committee has adopted the three procedures set out in this Standards Committee Procedures document to govern the processes of initial assessment and review of complaints, local investigation of complaints and local hearing of complaints.

# INITIAL ASSESSMENT OF COMPLAINTS

## **1. Introduction and Summary**

- 1.1 This note sets out the procedure which will be followed where any written allegation that a Member has breached the authority's Code of Conduct (a "complaint") is received by the Monitoring Officer. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Standards Committee Chair of the proposed variation to the procedure and the reasons for that variation.
- 1.2 Where such a complaint is received the Monitoring Officer will refer the complaint for assessment to the Initial Assessment Sub-Committee of the Standards Committee in accordance with this procedure to determine whether the allegation should be referred for investigation or some other action or no action should be taken concerning it.
- 1.3 Where it is determined that the allegation should be referred for local investigation, the Council's Procedure for Local Investigations of Allegations of Misconduct against Members of the Council will apply. In the circumstances set out in that procedure the complaint may later be referred back to the Initial Assessment Sub-Committee to be reconsidered.
- 1.4 Where it is determined that no action shall be taken in respect of the complaint, a review of that decision may be requested in accordance with this procedure.
- 1.5 This procedure has been prepared having had regard to the relevant guidance issued by the Standards Board for England.

## **2. Pre Assessment Steps**

### **Acknowledgement to Complainant**

- 2.1 As soon as reasonably practical after a complaint is received the Monitoring officer shall write to the complainant to acknowledge receipt of it.
- 2.2 Where a complaint addressed to the Monitoring Officer is not clearly about a member's conduct, the Monitoring Officer may refer the complainant to any alternative processes through which the complainant's concerns may be addressed, for example, the Council's ordinary complaints procedure.
- 2.3 The Monitoring Officer need not refer a complaint which is in his/her opinion a repetition of a previous complaint from the same complainant with no significant new information and shall inform the complainant accordingly.
- 2.4 Where a complaint is made orally the Monitoring Officer shall explain to the complainant that only written complaints will be considered by the Initial Assessment Sub-Committee and shall where appropriate provide assistance to the complainant in transcribing their complaint.

## **Notification to the Member**

- 2.5 At the same time as acknowledging receipt of the complaint the Monitoring Officer shall normally notify in writing the Member against whom the complaint is made:
- i. that the complaint has been received (in which case the provisions of paragraph 3.3 shall apply);
  - ii. the identity of the person making the allegation (unless the complainant has requested that this be kept confidential);
  - iii. of the section(s) of the Code of Conduct which appear to be relevant to the complaint and why;
  - iv. that a written summary will be provided following the initial assessment by the sub-committee.
  - v. the date of the initial assessment meeting, if known.
- 2.6 The Monitoring Officer shall not notify the Member of receipt of the allegation where s/he is of the opinion, following consultation with the Chair of the Standards Committee, that the Initial Assessment Sub-Committee may wish to postpone provision of the written summary under paragraph 6.2 of this procedure.

## **Anonymous Complaints**

- 2.7 The Monitoring Officer will not normally refer a complaint made anonymously to the Initial Assessment Sub-Committee but shall have a discretion to do so where the complaint includes photographic or documentary evidence indicating a possible serious breach of the code.

## **Informal Resolution of Complaints**

- 2.8 Where the Monitoring Officer is of the opinion that there is the potential for informal resolution of the complaint, s/he may approach the Member against whom the allegation has been made and ask whether s/he is prepared to acknowledge that his/her conduct was inappropriate, and whether s/he would be prepared to offer an apology or undertake other appropriate remedial action.
- 2.9 With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Initial Assessment Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant, so the Sub-Committee can take this into account when considering whether the matter merits investigation.

## **3 Report to the Initial Assessment Sub-Committee**

- 3.1 The Monitoring Officer shall prepare a report to the Initial Assessment sub-committee concerning the complaint setting out:
- i. a summary of the complaint;

- ii. any information or additional documentation obtained to clarify the complaint in accordance with paragraph 3.2 of this procedure.
  - ii. the relevant provisions of the Code of Conduct;
  - iii. a list of key documents relevant to the matter if necessary;
- 3.2 The Monitoring Officer shall not carry out any investigation into the complaint prior to the initial assessment by the Sub-Committee, but may take the following steps as appropriate in order to clarify the complaint received:
- i. obtain copies of relevant documents that are readily available, e.g. minutes of meetings or extracts the register of members' interests;
  - ii speak to the complainant to obtain factual information to clarify their complaint;
  - iii such other steps not amounting to investigation as the Monitoring Officer considers appropriate.
- 3.3 Where the complainant has requested that their identity be kept confidential, this request shall be brought to the attention of the Sub-Committee in the report. The Sub-Committee shall determine whether to accede to that request taking into account the following criteria:
- i any claim by the complainant that they would be at risk of physical harm, adverse consequences in their employment, inappropriate pressure or other personal disadvantage if their identity were revealed;
  - ii the practicality of investigating the complaint without revealing the identity of the complainant;
  - iii. any prejudicial impact on the Member.

If the Sub-Committee intends not to accede to the request it should consider whether it would be appropriate to ask the complainant whether they would prefer to withdraw the complaint.

#### **4 Initial Assessment Meeting**

- 4.1 A meeting of the Initial Assessment Sub-Committee to consider the complaint shall be held as soon as reasonably practicable and normally within 20 working days of receipt of the complaint. The Sub-Committee shall first consider whether the complaint relates to the conduct of a member of Islington Council at the time of the events in the complaint. The Sub-Committee shall then assess the complaint taking into account the assessment criteria at paragraph 5. The flowchart at Appendix 1 gives an overview of the process to be followed.
- 4.2 The Initial Assessment Sub-Committee shall make one of the following decisions:
- i That no further action shall be taken concerning the complaint, in which case paragraph 4.3 shall apply;
  - ii To refer the complaint to the Monitoring Officer for investigation, in which case paragraph 4.4 shall apply. (Where the Sub-Committee is re-considering a complaint referred back to it under the Procedure for Local Investigation of

Referred Complaints it may direct the Monitoring Officer that the complaint shall not be referred back a further time);

- iii To refer the complaint to the Monitoring Officer for other action in accordance with paragraph 7 of this procedure.
  - iv To refer the complaint to the Standards Board for investigation, where the sub-committee considers it would not be appropriate to investigate the matter locally, for example because of the seriousness of the complaint or the status of the members involved or because of a significant conflict of interest, in which case paragraph 4.5 shall apply;
  - v To refer the complaint to the Monitoring Officer of another authority of which the Member is a member, for example, where the Member is a member of both authorities but the sub-committee considers it more appropriate for the Monitoring Officer of the other authority to deal with the complaint.
- 4.3 If the sub-committee decides that no further action shall be taken the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that decision to the complainant and (except where the sub-committee has decided to withhold the Written Summary of the Complaint under paragraph 6 below and has not authorised the notice of decision to be sent to the Member) to the Member, with reasons for the decision and paragraph 8 “Review of Initial Assessment” shall apply to the complaint.
- 4.4 If the sub-committee decides to refer the complaint to the Monitoring Officer for investigation, the Council’s Procedure for Local Investigation of Allegations of Misconduct against Members of the Council shall apply. The Monitoring Officer shall, as soon as practicable after the sub-committee’s decision, appoint an investigating officer and send written notices of the sub-committee’s decision (except where the sub-committee has decided to withhold the Written Summary of the Complaint under paragraph 6 below and has not authorised the notice of decision to be sent to the Member) in accordance with paragraphs 2.1 -2.6 of that procedure.
- 4.5 If the sub-committee decides to refer the complaint to the Standards Board or to another authority the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that decision to the complainant and (except where the sub-committee has decided to withhold the Written Summary of the Complaint under paragraph 6 below and has not authorised the notice of decision to be sent to the Member) to the Member.
- 4.6 In the event that the complainant seeks to withdraw their complaint after it has been referred to the Initial Assessment Sub-Committee, the sub-committee shall consider whether to proceed with the initial assessment taking into account:
- i the public interest in some action being taken on the complaint;
  - ii the practicality of proceeding without the complainant’s co-operation;
  - iii any reason given, or identifiable, for the request to withdraw.
- 4.7 In accordance with guidance from the Standards Board for England meetings of the Initial Assessment and Review Sub-committee will be held in closed session.

## **5 Assessment Criteria**

- 5.1 In deciding what, if any, action should be taken in respect of the complaint the Initial Assessment Sub-Committee shall consider the following criteria:
- i whether, if the facts alleged were proven, they would amount to a breach;
  - ii whether sufficient information has been provided to enable the sub-committee to make a decision as to whether the complaint should be referred;
  - iii whether the complaint has already been the subject of an investigation or other action relating to the code or investigation by other regulatory authorities;
  - iv when the alleged breach occurred;
  - v whether the complaint appears malicious or politically motivated;
  - vi the seriousness of the alleged breach of the Code;

## **6 Written Summary of the Complaint**

- 6.1 The Initial Assessment Sub-Committee shall when carrying out the initial assessment of a complaint agree a written summary of the complaint which shall be provided to the Member with the Sub-Committee's assessment decision.
- 6.2 A copy of the written summary shall not be provided to the Member if the Sub-committee determines, taking into account the advice of the Monitoring Officer (or an Ethical Standards Officer of the Standards Board (an "ESO")), that to do so would be contrary to the public interest or would prejudice investigation of the complaint.
- 6.3 Where the written summary of the complaint is withheld in accordance with 6.2 above, the Initial Assessment Sub-Committee may give such details of the complaint as it considers will not be contrary to the public interest and will not prejudice the investigation.
- 6.4 The written summary of the complaint shall in any event be given to the Member as soon as the Monitoring Officer or an ESO advises the Initial Assessment Sub-Committee that to do so would not be contrary to the public interest and will not prejudice the investigation, and before the Standards Committee considers a report or recommendations from the Monitoring Officer or an ESO concerning the complaint.

## **7 Referral to the Monitoring Officer for Other Action**

- 7.1 The Initial Assessment Sub-Committee may, after consultation with the Monitoring Officer, refer the complaint to the Monitoring Officer with a direction to take steps other than investigation, which may be:
- i to arrange for the Member to attend training;
  - ii to arrange for conciliation to take place between the Member and the complainant;
  - iii such other steps as appear appropriate to the sub-committee.
- 7.2 Before making a decision to refer for other steps the Standards Committee may direct the Monitoring Officer to write to the Member and, if appropriate the



Complainant, to seek their confirmation that they will co-operate with the steps proposed.

- 7.3 Where the sub-committee decides to refer the complaint in accordance with this paragraph the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that decision to the complainant and to the Member with the Written Summary of the Complaint under paragraph 6 below (if not already supplied to the Member) or such lesser detail concerning the allegations as the Sub-Committee shall authorise under paragraph 6.3.
- 7.4 The Monitoring Officer shall within 3 months of the direction, or as soon as reasonably practicable thereafter, report back to the sub-committee giving details of the action taken or proposed to be taken to comply with the direction.
- 7.5 If the sub committee is not satisfied with the action or proposed action it shall give a further direction to the Monitoring Officer. If it is satisfied then it shall resolve accordingly and the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that decision to the complainant and to the Member.

## **8 Review of Initial Assessment**

- 8.1 If the Initial Assessment Sub-Committee decides that no action should be taken in respect of the Complainant, the Complainant shall have a period of 30 working days beginning with the date of the notice under paragraph 4.2 to request in writing that the decision be reviewed.
- 8.2 If a review is requested, the Review Sub-Committee shall meet in closed session to carry out the review, normally within 20 working days beginning with the date on which the request for a review is received and in any event within 3 months of that date.
- 8.3 No member of the Initial Assessment Sub-Committee who was present for the meeting which made the decision that is to be reviewed may sit as a member of the Review Sub-Committee.
- 8.4 In carrying out the review paragraphs 4 and 5 shall apply to the Review Sub-Committee.
- 8.5 In the event that the Review Committee determines that no further action shall be taken concerning the complaint, the Monitoring Officer shall, as soon as practicable thereafter, send a 6.2 notice of that decision to the complainant and (except where the sub-committee has decided to withhold the Written Summary of the Complaint under paragraph 6 above and has not authorised the notice of decision to be sent to the Member) to the Member with reasons for the decision. No further review may be requested in respect of the complaint.
- 8.6 If it appears to the Review Committee that the review request reveals further information amounting to a potential new complaint, it may refer that potential new complaint to the Initial Assessment Sub-Committee to be assessed.

# LOCAL INVESTIGATION OF REFERRED COMPLAINTS

## 1. Introduction and Summary

- 1.1 This procedure sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Member against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
- 1.2 Where the Standards Committee receives an allegation that a Member has breached the authority's Code of Conduct (a "complaint"), the Initial Assessment Sub-Committee of the Standards Committee meets to consider what, if any action, should be taken in respect of it. The decisions available to the sub-committee include referring the complaint to the authority's Monitoring Officer for investigation and referring the complaint to the Standards Board for investigation by an Ethical Standards Officer ("ESO"). At any point in an investigation the ESO may determine that the complaint should be referred to the authority's Monitoring Officer to investigate. If the complaint is referred to the Monitoring Officer s/he is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee.
- 1.3 Where the Investigating Officer has found, after investigation, that the Member has not acted in breach of the authority's Code of Conduct, the Standards Committee must meet to decide whether to accept that finding or to proceed to a formal hearing. Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence.
- 1.4 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 Member has failed to comply with the authority's Code of Conduct for Members, and upon any consequential action.
- 1.5 The Standards Committee 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 probability based on 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.

## 2. Notification of Reference of Allegation to the Monitoring Officer

### **Appointment of Investigating Officer**

- 2.1 Upon referral of a complaint by the Standards Committee or from an ESO, the Monitoring Officer will appoint an Investigating Officer in respect of the complaint and instruct them to conduct an investigation of the complaint and to report thereon to the

authority's Standards Committee. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external Investigating Officer.

- 2.2 The Investigating Officer may appoint persons to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

#### **Notification to the Member**

- 2.3 The Monitoring Officer will then as soon as reasonable practicable (except where the Initial Assessment Sub-Committee has decided to withhold the Written Summary of the Complaint under paragraph 6.2 of the Initial Assessment of Complaints Procedure above and has not authorised the Member to be notified that the investigation is underway) notify in writing the Member against whom the allegation is made;

- v. that the allegation has been referred to them for local investigation and determination;
- vi. the identity of the person making the allegation (unless the Initial Assessment Sub-Committee has agreed that identification of the complainant might prejudice the investigation or put the complainant at risk);
- vii. of the conduct which is the subject of the allegation (including the Written Summary of the Complaint unless the Initial Assessment Sub-Committee has decided to withhold this paragraph 6.2 of the Initial Assessment of Complaints Procedure above);
- viii. of the section(s) of the Code of Conduct which appear to them to be relevant to the allegation;
- ix. of the procedure which will be followed in respect of the allegation, and
- x. of the identity of the Investigating Officer.

- 2.4 The Monitoring Officer shall provide the Member with a copy of any report received from the ESO.

#### **Notification to the Standards Committee**

- 2.5 At the same time as notifying the Member, the Monitoring Officer will notify each member of the Standards Committee in writing that an investigation is underway.

#### **Notification to the Person who made the Allegation**

- 2.6 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), (iii)-(vi) above.

#### **Initial response of the Member**

- 2.7 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 a 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 information which the Member would wish the Investigating Officer to seek from any person or organisation.

### **Supporting information from the person who made the allegation**

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

- i. listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- ii. providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of a person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- iii. providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

## **3 Conduct of Investigation**

### **Purpose of the Investigation**

3.1 The purpose of the Investigating Officer's investigation is to enable them 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 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 in consequence.

### **Additional Matters**

3.2 Where, in the course of their investigation, the Investigating Officer becomes aware of any other matter which appears to them to indicate a breach of the Code of Conduct by the Member other than the breach which they are currently investigating, the Investigating Officer shall report the matter to the Monitoring Officer who will consider whether to refer the matter to the Initial Assessment Sub-Committee in accordance with the Council's Procedure for Initial Assessment of Complaints.

3.3 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 27(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless they are 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.

### **Production of documents, information and explanations**

- 3.4 In the course of the investigation, the Investigating Officer and any person authorised on their behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in their possession or control, or provide any explanation, as they think necessary for the purposes of carrying out the investigation.
- 3.5 In the course of the investigation, the Investigating Officer and any person authorised on their behalf may require any authority of which the Member is a member to provide any document which is in its possession or control which they think necessary for the purposes of carrying out the investigation.

### **Interviews**

3.6 (i) **Requesting attendance**

In the course of the investigation the Investigating Officer may request, or where possible require, any person to attend and appear before them or otherwise provide any information, document or explanation for the purpose of Paragraph 2(e), as they think necessary for the purposes of carrying out the investigation.

(ii) **Representation**

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

(iii) **Notes of interviews**

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.

### **Costs**

- 3.7 The Investigating Officer may, where they consider 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 their request, such fees or allowances as they consider to be appropriate subject to the approval of the Monitoring Officer.

## **Reference back to the Standards Committee**

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

- i the seriousness of the matter which they are investigating is materially more or less serious than may have been apparent to the Initial Assessment Sub-Committee when it made its decision (or the Review Sub-Committee when it carried out its review) and the relevant sub-committee would have made a different decision had it been aware of the new information or evidence; or
- ii the Member has died, is seriously ill or has resigned from Islington Council and it is no longer appropriate to continue with an investigation;

they may suspend their investigation and consult with the Monitoring Officer.

3.9 If the Monitoring officer is of the same opinion s/he shall then refer the complaint to the Initial Assessment Sub-Committee. In forming this opinion the Monitoring Officer may take into account:

- i the failure of any person to co-operate with the investigation;
- ii any allegation that the Member has been involved in a further breach of the Code
- iii an allegation that another member has been engaged in a related breach of the Code.

3.10 The Sub-Committee shall assess the complaint again and paragraphs 4 and 5 of the Procedure for Initial Assessment of Complaints shall apply.

## **4 The Draft Report**

4.1 When the Investigating Officer is satisfied that they have sufficient information to meet the requirement set out in Paragraph 3.1, or has obtained as much information as is likely to be reasonably capable of being obtained, they shall prepare a draft report 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 they have obtained in the course of the investigation;
- v. a list of any documents relevant to the matter;
- vi. a list of those persons whom they have interviewed and those organisations from whom they have 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 their draft findings of fact;

- ix. their conclusion as to whether the Member has or has not failed to comply with the Code of Conduct, and
  - x. any recommendations which the Investigating Officer is minded to make to the authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.
- 4.2 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 Standards Committee once they have considered any comments received on the draft report.
- 4.3 The Investigating Officer shall then send a copy of their draft report in confidence to the Member and the complainant, and request that they send any comments thereon to them.
- 4.4 The Investigating Officer may send a copy of, or relevant extracts from their draft report in confidence to any person on whose evidence they have relied upon in compiling the draft report, and request that they send any comments thereon to them.
- 4.5 The Investigating Officer shall specify a period of between 7 and 14 days (depending upon the complexity of the matter) for comments under 4.3 and 4.4 to be received.

## **5 The Final Report**

- 5.1 After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend their draft report in the light of any comments received, and produce and send to the Monitoring Officer their final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching their conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses.
- 5.2 The Monitoring Officer shall then send a copy of the final report to the Member, advising that the final report will be referred to the Standards Committee to decide:
- i. where the final report concludes that there has not been a failure to comply with the Code of Conduct, whether that finding is accepted by the Committee, and
  - ii. where the final report concludes that there has been a failure by the Member to comply with the Code of Conduct, whether the complaint should be heard by the Committee or will be referred the Adjudication Panel for England for a formal hearing (although this option is only available if the Standards Committee determines that the action it could take against the Member would be insufficient were a finding of failure to comply with the code to be made and the president or deputy president of the Adjudication Panel for England has agreed to accept the referral);
  - iii. where the report recommends that the complaint should be heard by the

Standards Committee, the Member shall be advised that if the Committee agrees to hear the complaint s/he is entitled to notice under paragraph 5.5 from the Standards Committee of this decision before the actual hearing takes place. The Member may, if the Monitoring Officer considers appropriate (for example because the case is straightforward), be informed that if s/he is willing to waive that requirement, the Committee will be able to progress immediately to a hearing of the complaint at the same meeting.

- 5.3 The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to the complainant together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.
- 5.4 Where the Standards Committee considers the report in accordance with Paragraph 5.2 above, 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 complaint;
  - (ii) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings;
  - (iii) That the matter should be referred to the Adjudication Panel for England.
- 5.5 Where the Standards Committee finds as set out in paragraph 5.4 above, the Monitoring Officer shall, as soon as reasonably practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to;
- i. The Member;
  - ii. Any Ethical Standards Officer involved;
  - iii. The Standards Committee of any other local authority of which the Member is also a member
  - iv. The person who made the allegation;
  - v. The Complainant.

and in the case of a finding under 5.4(i) shall ask the Member whether they object to the publication of a notice of the finding in at least one local newspaper and on the Council's website, and arrange for the publication of such a notice unless the Member so objects.

## **6 The Hearing**

- 6.1 Where the Standards Committee finds at its meeting to consider the report that the matter should be considered at a full local hearing before the Committee, that hearing shall take place within 3 months (or as soon as practicable thereafter) of:
- i the date on which the Monitoring Officer received the report from the ESO; or



ii the date on which the Investigating Officer completed the final report;

and not less than 14 days after the final report was sent to the Member, unless the Member agrees to an earlier date.

- 6.2 If the Member has agreed to waive their entitlement to separate notice of this decision under paragraph 5.2 (iii) the Standards Committee may proceed immediately to hear the complaint in accordance with the Procedure for Local Determination Hearings at the meeting under paragraph 6.1.
- 6.3 If the entitlement to notification of this decision under paragraph 5.5 has not been waived, the Monitoring Officer shall arrange a date for the matter to be considered at a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings.
- 6.4 In either case the Monitoring Officer shall consider whether the pre-hearing process inset out in the Procedure for Local Determination Hearings shall be applied.

# LOCAL DETERMINATION HEARINGS

## **1 Introduction**

- 1.1 Where the Investigating Officer's report under the Council's Procedure for Local Investigation of Complaints contains a finding that a Member failed to comply with the Code of Conduct and the Standards Committee finds at its meeting to consider the report determines that the matter should be considered at a full local hearing before the Standards Committee, this procedure will apply to the hearing.
- 1.2 This procedure will also apply where an Ethical Standards Officer of the Standards Board for England (an "ESO") refers a matter to be heard by the Standards Committee.
- 1.3 No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Member against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation. Interpretation of terms used in this procedure is explained in paragraph 15.
- 1.4 Although the main purpose of the Standards Committee's hearing is to decide whether or not a member has breached the Member Code of Conduct and what, if any, sanction should be imposed, the Committee may also want to give general guidance or advice to the authority or to all or some members.
- 1.5 The Member may appeal against the decision of the Standards Committee but only with the prior approval of the President of the Adjudication Panel

## **The Pre-Hearing Procedure**

## **2. General Provisions**

- 2.1 In cases where the Monitoring Officer considers the complexity of the issues or the evidence requires extensive pre-hearing preparation the process set out in paragraphs 4 and 5 shall apply.
- 2.2 In other cases the Monitoring Officer shall take such steps as s/he considers appropriate in preparation for the hearing to identify any disputes of fact between the member and the Investigating Officer or the ESO in respect of matters in the investigation report, and to identify any witnesses and evidence to be presented. This is to ensure that the Standards Committee has everything which it needs in order to determine the complaint.
- 2.3 The pre-hearing process will usually be carried out in writing, although occasionally a face-to-face meeting may be necessary.

## **3 Setting the Hearing Date**

- 3.1 The Committee Support Officer, in consultation with the Chair of the Committee, will write to the Member concerned to propose a date, time and place for the hearing, outline the hearing procedure and the Member's rights and shall enclose a copy of this procedure.

- 3.2 The Hearing shall take place within 3 months (or as soon as practicable thereafter) of
- i the date on which the Monitoring Officer received the report from the ESO; or
  - ii the date on which the Investigating Officer completed the final report;

and not less than 14 days after the final report was sent to the Member, unless the Member agrees to an earlier date.

- 3.3 Any objection to the proposed hearing date must be notified in writing to the Monitoring Officer forthwith. The Monitoring Officer will act reasonably in considering any requests for an alternative hearing date but is not obliged to reschedule the hearing, having particular regard to the requirement to convene a hearing within three months. The Monitoring Officer will consult with the Chair before re-scheduling the meeting.

#### **4. Written response from Member**

- 4.1 The Committee Support Officer's letter under 3.1 will ask the Member for a written response in respect of the findings in the report and other issues relevant to the Hearing, to find out whether or not s/he:

- i Disagrees with any of the findings of fact in the Investigator's report, including the reasons for any disagreements;
- ii Agrees s/he has breached the Code of Conduct and, if not, why.
- iii Has given, or would be willing to give an apology and/or undergo any training or conciliation.
- iv Has anything s/he would like to be taken into account by the Committee when it considers whether a sanction should be imposed if a breach is found.
- v Wants to be represented at the hearing by a solicitor, barrister or any other person;
- vi Wants to give evidence to the Standards Committee either verbally or in writing (if he or she intends to submit only written representations the Member will be asked to attach the written representations);
- vii Wants to call relevant witnesses to give evidence to the Standards Committee, and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence each witness will give;
- viii Wants to produce any documents in support of his/her case and if so to provide them with the response form;
- ix Wants any part of the hearing to be held in private and, if so, the reasons for the request. Meetings will normally be held in public but the Committee will consider the Member's request to hold it in private;
- x Wants any part of the Investigator's report or any other relevant documents to be withheld from the public;
- xi Has any comments or questions on the procedure to be followed; and
- xii Has (or any witnesses or representative has) any special access requirements or other special requirements e.g. interpreter, special print or a hearing loop.

- 4.2 The Standards Committee will not allow members to raise new disagreements over findings of fact in the Investigators report at the hearing that were not raised in response to this letter unless there are good reasons for doing so, such as new evidence becoming available.

- 4.3 There are model forms available to help the member respond to the Standards Committee, including forms to identify any findings of fact that s/he disagrees with and to outline any further evidence for the Standards Committee.
- 4.4 The Committee Support Officer shall specify a period as determined by the Monitoring Officer in the light of the complexity of the matter, within which the response from the Member shall be received.

## **5 The Investigator's response**

- 5.1 The Committee Support Officer will invite the relevant Investigator to comment on the Member's response, to say whether or not s/he:
- i Wants to be represented at the hearing;
  - ii Wants to call relevant witnesses to give evidence to the Standards Committee and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give if different to the summary of their evidence in the Investigator's report;
  - iii Wants any part of the hearing to be held in private;
  - iv Wants any part of the Investigator's report or other relevant documents to be withheld from the public.
  - v Will be asking the Committee to consider any documentary or other written evidence (other than the report of the investigation) and, if so, to provide copies.
  - vi Thinks the hearing should be held in private and, if so, the reasons why.
  - vii Would wish to have any documents in the member's response form to be withheld from the public and, if so, why.

and shall specify a period as determined by the Monitoring Officer in the light of the complexity of the matter within which the response from the Investigator shall be received.

### **Other witnesses**

- 5.2 The Standards Committee may also arrange for any other witnesses to be present if it feels they may help in determining the case, including the person who made the original allegation. However, the Committee cannot order witnesses to appear or give evidence.

## **6 The Pre-hearing Process Summary**

- 6.1 The Monitoring Officer shall prepare a Pre Hearing Summary which:
- Summarises the allegation;
  - Outlines the main facts of the case that are agreed;
  - Outlines the main facts which are not agreed;
  - Gives an explanation of those parts of the Code of Conduct which are alleged to have been breached
  - States whether the Member has acknowledged the breach
  - States whether the Member has agreed to give an apology and/or to undergo any training or conciliation
  - Notes whether the member concerned or the Investigator will go to or be represented at the hearing;
  - Lists those witnesses, if any, who will be asked to give evidence.

- 6.2 At least 5 clear days before the hearing the Committee Support Officer shall circulate:
- i the Pre-hearing Process Summary;
  - ii an outline of the proposed procedure for the hearing
  - iii the Investigator's report and any documents which the member or the Investigator has indicated they wish to rely on.

### **Disputes on the Pre-Hearing Summary**

- 6.3 If having received the Pre-Hearing Summary the Member disagrees with any part of it he or she shall forthwith give notice of the disputed issues to the Monitoring Officer. The Member should then seek to resolve the disputed issues with the Monitoring Officer prior to the Hearing. If necessary, the Member should contact the Monitoring Officer to arrange a convenient time to meet the Monitoring Officer to discuss the issues. This meeting must take place before the Hearing and should be convened as soon as possible in order to allow sufficient time to try to resolve any disputes prior to the hearing. Any unresolved issues will be dealt with as a preliminary matter at the hearing.
- 6.4 Failure to notify the Monitoring Officer of any issues of dispute or any failure to attempt to resolve those issues with the Monitoring Officer prior to the Hearing may mean that the Committee may decline to listen to the Member's views on the disputed issues at the Hearing.

## **The Hearing Procedure**

### **7 General Provisions**

#### **7.1 Modification of Procedure**

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

#### **7.2 Representation**

The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

#### **7.3 Legal Advice**

The Committee may take legal advice from its Monitoring Officer or her representative at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the member and the Investigator if they are present.

#### **7.4 Recordings**

Hearings may be tape recorded but the tapes will only be transcribed in the event of an appeal and would not be available for general release.

## 7.5 Setting the Scene

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

## 8 Preliminary procedural issues

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

### 8.1 Declarations of interest

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

### 8.2 Quorum

The Chair shall confirm that the Committee is quorate. The quorum for a meeting of the Committee is 3 (at least one of whom must be an independent member).

### 8.3 Delay at start of hearing

The hearing shall commence on the date and at the time stipulated in the notice convening the meeting but the start may be delayed by the Chair for a reasonable period if, having had regard to the advice of the officers present and any representations received from or on behalf of the parties he or she considers such delay to be reasonable in the circumstances. The Chair will take into account the effect the delay may have on the likelihood of the hearing being concluded in the one session.

### 8.4 Hearing procedure

The Chair shall confirm that all present know the procedure which the Committee will follow in determining the matter. The Chair shall be responsible for regulating the proceedings and his/her ruling on any point shall be final.

### 8.5 Proceeding in the absence of the member

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

- (i) the Chair shall ask the Monitoring Officer whether the member has indicated his/her intention not to attend the hearing;
- (ii) the Committee 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 Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Committee is not satisfied with such reasons, or if the member has not

given any such reasons, the Committee 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.

#### 8.6 Exclusion of Press and Public

The Chair shall ask the member, the Investigator and the Monitoring Officer to the Committee whether they wish to ask the Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing. Guidance on how to reach such a decision is set out in Appendix 2.

### **9 A failure to comply with the Code of Conduct?**

The Committee will then address the issue of whether the member failed to comply with the Code of Conduct in the manner set out in the Investigator's report.

#### 9.1 Introduction by the Monitoring Officer

The Chair will ask the Monitoring Officer to present the Pre Hearing Summary report, highlighting any points of difference in respect of which the member has stated that s/he disagrees with any finding of fact in the Investigator's report, including the outcome of any discussions under paragraph 6.2 about this. The Chair will then ask the member, if present, to confirm that this is an accurate summary of the issues and ask the member to identify any additional points upon which s/he disagrees with any finding of fact in the Investigator's report.

- (i) If the member identifies additional points of difference, the Chair shall ask the member to explain why s/he did not identify these points as part of the pre-hearing process. S/he shall then ask the Investigator (if present) whether s/he 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 Committee 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 newly contested findings of fact, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.
- (ii) If the member admits that s/he has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Committee may then make a determination that the member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken.
- (iii) In the event that the Member or the ESO or the Investigator has submitted written representations prior to the Hearing then they shall stand as read but the Member or the ESO or Investigator as the case may be will be asked whether they have anything new to add to them. If they do then they will be invited to do so during their submission.

9.3 At any time the members of the Committee and/or the Monitoring Officer may, with the permission of the Chair, question the investigator, the Member or their representative or any of the witnesses.

#### 9.4 Presenting the Investigator's report

- (i) If the Investigator is present, the Chair will then ask the Investigator to present his/her report, having particular regard to any points of difference identified by the member and why s/he concluded, on the basis of the findings of fact, that the member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
- (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the Investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witnesses' attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- (iii) The member or his/her representative may ask questions of the Investigator or witnesses. The Chair shall ensure that the questioning does not become overly adversarial and may intervene if s/he considers that this is the case.
- (iv) At the conclusion of the Investigator's report and/or the evidence of each witness, members of the committee should be able to ask direct questions of them to clarify any issues.

#### 9.5 The member's response

- (i) If the member is present the Chair shall then invite the member to respond to the Investigator's report and to call any witnesses as necessary to address any points of difference.
- (ii) At the conclusion of the member's evidence and/or of the evidence of each witness, members of the committee should be able to ask direct questions of them to clarify any issues.
- (iii) The member or his/her representative may ask questions of the Investigator or witnesses. The Chair shall ensure that the questioning does not become overly adversarial and may intervene if s/he considers that this is the case.

#### 9.6 Witnesses

The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which will assist them to determine whether there has been a failure to comply with the code of conduct.

#### 9.7 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 Committee is satisfied that s/he 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 Investigator's report.
- (ii) The Committee 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 Investigator's report. The Monitoring Officer for the Council and the Committee Support Officer may accompany the Committee.

## **10 Reaching a decision**

- 10.1 The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- 10.2 The Committee shall seek to reach a unanimous decision but if that is not possible than the decision shall be reached by a simple majority. In the case of an equality of votes the person presiding at the meeting shall have a second or casting vote.
- 10.3 The Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the member or a witness, or to seek legal advice.
- 10.4 If the Committee requires any further information on a matter that has been investigated locally, it may adjourn (on one occasion only) and instruct an officer or request the member to produce such further evidence to the Committee. Where the matter has been referred to the Standards Committee by an ESO the Committee may prior to the conclusion of the hearing adjourn to make a written request to the ESO to carry out further investigation.
- 10.5 At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among members.
- 10.6 If the Committee considers that the alleged breach of the Code has taken place, it may form an initial view on the appropriate sanction.
- 10.7 The Committee shall then return to the main hearing room and the Chair will state the Committee'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 Investigator's report. It shall indicate which sanction it is considering and shall invite the member to make representations on the question of the sanction if s/he so chooses. The Committee shall then retire, to make a final decision on the sanction to be imposed and shall return to the room to inform those present of the outcome of its deliberations.

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

- 11.1 The sanctions which are available to the Committee are any, or any combination, of the following:
  - (i) censure of that member;

- (ii) restriction for a maximum period of six months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that such restrictions imposed upon the member:
  - (a) are reasonable and proportionate to the nature of the breach; and
  - (b) do not unreasonably restrict the member's ability to perform his functions and duties as a member.
- (iii) partial suspension of that member for a maximum period of six months;
- (iv) partial suspension of that member for a maximum period of six months or until such time as they submit a written apology or undergoes any training or conciliation specified by the Standards Committee;
- (v) suspension of that member for a maximum period of six months;
- (vi) suspension of that member for a maximum period of six months or until such time as they submit a written apology or undergoes any training or conciliation specified by the Standards Committee.
- (vii) to recommend to the Corporate Services Committee that they consider withdrawal or partial withdrawal of allowances to that councillor for a period of up to six months.

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

11.3 It is also open to the committee to decide that in the circumstances no action should be taken against the member.

11.4 Appendix 3 contains guidance for the Committee in considering the appropriate sanction to impose.

## **12 If the member has not failed to follow the Code of Conduct**

12.1 If the Committee determines that the member has not failed to follow the Code of Conduct in the manner set out in the Investigator's report they shall set out their reasons for not agreeing with the Investigators report.

12.2 If the Committee finds, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct in some other respect but which has not been part of the original investigation the Chair shall outline the Committee's concerns and shall then refer this additional or alternative failure to the Monitoring Officer with a view to a further complaint being referred to the Committee's Initial Assessment Sub-Committee.

12.3 The Chair should then set out any recommendations which the Committee 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 Investigator and the Monitoring Officer before the Committee finalises any such recommendations.

12.4 Where there is a finding of no evidence of a breach, the Chair will also ask the Member whether he or she wishes the decision of the Committee to be published in the local paper.

## **13 The close of the hearing**

13.1 The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the

Committee Support Officer will deliver to the member as soon as practicable after the close of the hearing.

- 13.2 The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;

#### **14 Action after the hearing**

- 14.1 Within two weeks after the close of the hearing, the Committee Support Officer will agree a formal written notice of the Committee's determination with the Monitoring Officer and shall send it to the following people:

- the Member
- the Ethical Standards Officer
- the Investigator (if not the Ethical Standards Officer)
- the members of the Committee
- the members of the Standards Committee of any other authority involved
- the person who made the allegation

- 14.2 The full written decision will follow the format recommended by the Standards Board for England and will also include guidance on how to appeal and the steps to be taken to avoid a suspended sanction taking effect.

- 14.3 The Monitoring Officer shall publish a summary of the findings in a local newspaper circulating in the area save in the case where there was no finding of a breach in which case a notice shall only be published if the Member agreed to such publication.

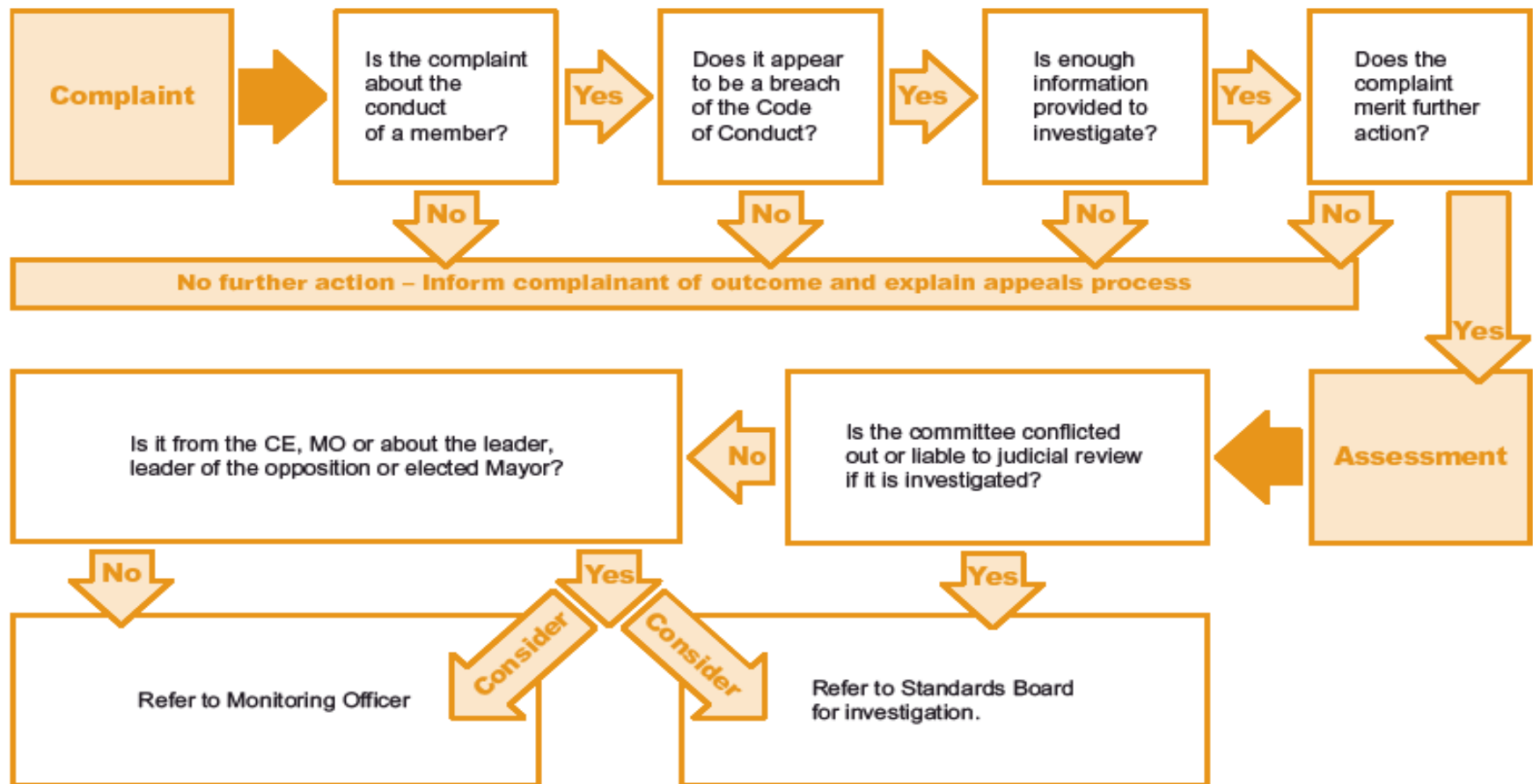
#### **15 Interpretation**

|                                 |  |
|---------------------------------|--|
| 'Investigator' means            | the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative, or the Investigating Officer appointed by the Monitoring Officer under the Procedure for Local Investigation of Complaint. |
| 'Member' means                  | the member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.   |
| 'Monitoring Officer' means      | the Council's the Monitoring Officer or other legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.  |
| 'The Matter' is                 | the subject matter of the Investigator's report.   |
| 'The Chair' is                  | the person presiding at the hearing.   |
| 'The Committee'                 | is the Standards Committee.  |
| 'The Committee Support Officer' | means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.  |

APPENDIX 1

**Local Filter Pilot Complaint Handling Chart**

Sixth Annual Assembly of Standards Committees 15-16 October 2007, ICC, Birmingham



## APPENDIX 2

### Categories of Exempt Information under the Local Government Act 1972

| Category   | Condition   |
|--|---|
| 1. Information relating to any individual.   | This information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.   |
| 2. Information which is likely to reveal the identity of an individual.  | This information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.   |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).  | <p>Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under—</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 1985;</li> <li>(b) the Friendly Societies Act 1974;</li> <li>(c) the Friendly Societies Act 1992;</li> <li>(d) the Industrial and Provident Societies Acts 1965 to 1978;</li> <li>(e) the Building Societies Act 1986; or</li> <li>(f) the Charities Act 1993.</li> </ul> <p>Information falling within paragraph 3 is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p> |
| 4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority. | This information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.   |
| 5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.   | This information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in   |

|   |  |
|---|--|
|   | disclosing the information.  |
| 6. Information which reveals that the authority proposes -<br><br>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or<br><br>(b) to make an order or direction under any enactment  | This information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.  |
| 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.  | This information is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information..   |
| 8. Information which is subject to any obligation of confidentiality. .   | Information in this category is exempt where a meeting of the standards committee or a sub-committee of the standards committee is convened to consider a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000 Act.<br><br>The public interest test applies |
| 9. Information which relates in any way to matters concerning national security.  | As above.  |
| 10. Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000 | As above.  |

## **Admission of Press and Public to Standards Committee Hearings**

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair.

However, there may be some circumstances where parts of the hearing should be held in private.

- (a) At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the Local Government Act 1972 (as modified in relation to local determinations by Standards Committees). If the Committee considers that 'confidential information' is likely to be revealed during the hearing, the Committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
- (b) The Committee also has the discretion to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed above. The Committee should bear in mind Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee also has a duty to act fairly and in line with the rules of natural justice.
- (c) Article 6 says that the public may be excluded from all or part of the hearing if it is in the interest of:
  - (i) morals;
  - (ii) public order;
  - (iii) justice;
  - (iv) national security in a democratic society; or
  - (v) protecting young people under 18 and the private lives of anyone involved.
- (d) There should be a public hearing unless the Committee decides that there is a good reason, which falls within one of the five categories above (i) to (v), for the public to be excluded.
- (e) Conflicting rights often have to be balanced against each other. The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their

private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:-

- (i) in line with the law; and
- (ii) necessary in a democratic society in the interests of:
  - (a) national security;
  - (b) public safety;
  - (c) the economic well-being of the country;
  - (d) preventing crime or disorder;
  - (e) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
  - (f) protecting people's rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

Standards for England recommends that a Standards Committee should move to a private room when considering its decisions. Provided reasons for those decisions are given, and the content of any legal advice given in private is shared with the member and Investigator, it is not considered that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.



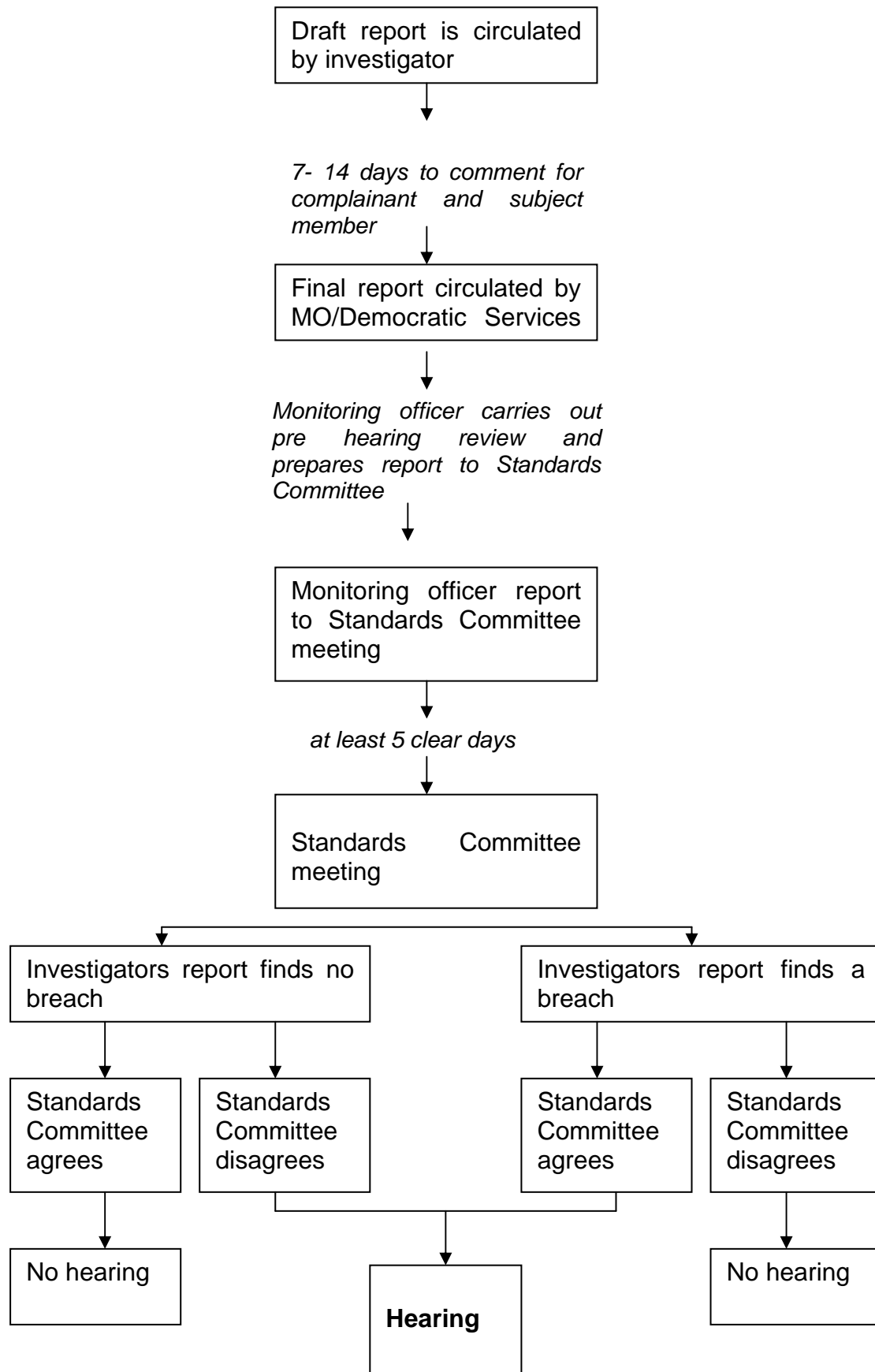
## APPENDIX 3

### Deciding a penalty

- 1 When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the member's behaviour.
- 2 Before deciding what penalty to set, the Standards Committee should consider the following questions, along with any other relevant circumstances.
  - What was the member's intention?
  - Did the member know that he or she was failing to follow the Code of Conduct?
  - Did the member get advice from officers before the incident?
  - Was that advice acted on in good faith?
  - Has there been a breach of trust?
  - Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
  - What was the result of failing to follow the Code of Conduct?
  - How serious was the incident?
  - Does the member accept he or she was at fault?
  - Did the member apologise to the relevant people?
  - Has the member previously been warned or reprimanded for similar misconduct?
  - Has the member failed to follow the Code of Conduct before?
  - Is the member likely to do the same thing again?
- 3 Suspension may be appropriate for more serious cases, such as those involving:
  - bullying officers;
  - trying to gain an advantage or disadvantage for themselves or others; or
  - dishonesty or breaches of trust.
- 4 It may be relevant to consider any decisions taken by other Standards Committees and case tribunals drawn from the Adjudication Panel for England that deal with similar types of cases.

## APPENDIX 4 - Hearing Process Flowcharts

### (a) Standards Committee Hearing Process (one meeting)



**(b) Standards Committee Hearing Process (two meetings)**

