

**CODE OF CONDUCT FOR MEMBERS – DRAFT SECTION 66 PROCEDURE**

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**1. Purpose**

- 1.1 To provide a draft procedure for dealing with cases referred to the Council by Ethical Standards Officers of the Standards Board for England for local determination

**2. Recommendations**

- 2.1 That the Committee adopt the attached Procedure for Local Standards Hearings at **Annex A**.
- 2.2 That a sub-committee of three members be set up to deal with cases referred for local determination by an ethical standards officer of the Standards Board for England.
- 2.3 That the Sub-Committee consist of two independent members of the Committee, of whom one should be a parish representative if the subject matter of the Sub-Committee's deliberations concerns a parish councillor or other parish issues, and a third from the same political party as the subject of the referral.
- 2.4 That if the subject of the referral is not a representative of a political party the third member will be chosen at random by the Committee Administrator.
- 2.5 That the Committee consider what training can be provided to those members who will deal with hearings.

**3. Background**

- 3.1 The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 allow the Standards Board's Ethical Standards Officers (ESOs) to refer complaints of misconduct by Councillors to the Standards Committees of local authorities for local determination. These regulations cover the case where the ESO has already completed the investigation into a complaint.
- 3.2 Further regulations will provide for complaints to be referred at an earlier stage, for the Monitoring Officer to arrange for local investigation before reporting to the Standards Committee. The Standards Board for England has published statutory guidance on how local authorities should implement the new regulations which the committee needs to take into account when

deciding what procedures to adopt. A copy of the main body of the guidance is set out at **Annex B**.

#### 4. **Which cases will be referred for local determination?**

4.1 On completing his/her investigation of a complaint, the ESO has to make one of the following decisions about it:

(a) There is no evidence of a failure to comply with the Code of Conduct

The Standards Committee then has no role.

(b) No action needs to be taken in respect of the cases, which are the subject of the investigation.

The Standards Committee then has no role.

(c) The issues which are the subject of the investigation should be referred to the Monitoring Officer of the relevant authority concerned.

This will be the case where the ESO concludes that there has been a significant failure to comply with the Code of Conduct but that it is likely that the appropriate action to be taken is within the range of actions which are available to the Standards Committee of the authority concerned. These are:

(i) Censure

(ii) Withdrawal or partial withdrawal of Council-provided facilities for up to 3 months

(iii) Suspension as a member of that Council, in whole or in part, for up to 3 months, and/or

(iv) Consequent withdrawal or partial withdrawal of allowances for up to 3 months.

In this case, the Monitoring Officer must report the case to the Standards Committee and the Standards Committee must determine the case within 3 months of the ESO referring the case to the Monitoring Officer.

(d) The case should be referred to the President of the Adjudication Panel for England for adjudication by a Case Tribunal

Where the Case Tribunal decides to disqualify the Member, that disqualification takes effect as soon as the Case Tribunal writes to the member and the authority to that effect. Where the Case Tribunal decides that the Member should be suspended, it will write to the Monitoring Officer to instruct the Standards Committee to suspend the member, and the Standards Committee must then meet and suspend

the member as instructed. In addition, the Case Tribunal can make recommendations to the Standards Committee, for example about improving systems or providing further training for Members, and the Standards Committee must consider those recommendations and report back to the Standards Board.

## 5. **The Pre-Hearing Procedure**

5.1 The Standards Board recommends that the Standards Committee should carry out an extensive pre-hearing procedure in preparation for the hearing. The purpose is to:

- (a) identify any disputes of fact between the member and the Ethical Standards Officer's report,
- (b) identify any witnesses and any evidence to be presented,
- (c) ensure that there are no surprises at the hearing; and
- (d) ensure that the Standards Committee has everything which it needs in order to determine the complaint.

5.2 In practice, much of this pre-hearing procedure ought to be conducted by the Monitoring Officer writing to the Member and asking him/her to provide necessary information, but the Standards Board recommends that the member be given the opportunity to deal with the case at a formal meeting of the Standards Committee if he/she so demands.

5.3 One feature of the pre-hearing process is that, once the member has identified any points on which he/she disagrees with the ESO, the Monitoring Officer will ask the ESO whether he/she wishes to attend the local hearing to give evidence, or to arrange for the attendance of any witnesses. The Standards Committee can request his/her attendance at the hearing where it feels that this would be helpful in resolving any dispute.

## 6. **The Hearing Procedure**

6.1 The Standards Board has recommended a very helpful model procedure for the actual hearing before the Standards Committee. This is attached as **Annex A**. Note that the Chair of the Standards Committee can vary the procedure in any particular case where he/she considers that it would be beneficial to do so.

## 7. **Further Developments**

### 7.1 Standards Sub-Committees

The Standards Board recommends that it would be appropriate to set up Sub-Committees, of no more than 5 members, to hear individual cases rather than have hearings before the full Standards Committee. I would suggest 3 members, of whom at least two must be independent members of the committee and where the case is about a parish councillor at least one of those two would be a parish representative. The third member would be from the same political party as the subject of the hearing. If the subject is not a representative of a political party the third member will be chosen at random by the Committee Support Officer.

### 7.2 Local Investigation

The Local Government Act 2003 enables the Monitoring Officer to delegate any of his/her responsibilities. In practice, he/she will arrange for another officer or an external investigator to conduct the investigation and will continue as the primary adviser to the Standards Committee. A further set of regulations will provide for local investigation.

## 8. **Training**

8.1 The Committee is asked to consider arranging training for those likely to deal with referred complaints. Attached at **Annex C** is a flowchart that might be useful for summarising the process for all Members.

## 9. **Implications**

### 9.1 Financial

It is too early to assess with any degree of accuracy what the financial implications will be of these new obligations and powers given to the Standards Committee and Monitoring Officer. So far there have been no referrals back from the Standards Board who have had this power for the last 6 months. It would be prudent for the committee to have a budget of £10,000 to cover the costs of investigations and training once the regulations are in place to allow for local investigation of cases referred from the Standards Board.

### 9.2 Legal

These are covered in the report

Background Papers: None

## Standards Committee

### Procedure for Local Standards Hearings

#### 1 Interpretation

- (a) '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.
- (b) 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of cases that have been referred for local investigation, references to the investigator mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (c) "The Case" is the subject case of the investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) "The Committee 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.
- (f) 'Legal advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) "The Chair" refers to the person presiding at the hearing.

#### 2 Modification of Procedure

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

### **3 Representation**

The member may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the committee, another person. Note that the member must meet the cost of such representation, unless the Committee has expressly agreed to meet all or any part of that cost.

### **4 Legal Advice**

The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the parties present.

### **5 Setting the Scene**

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

### **6 Preliminary procedural issues**

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

(a) Disclosures of interest

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

(b) Quorum

The Chair will confirm that the Committee is quorate<sup>1</sup>

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<sup>1</sup> A meeting of the Committee is not quorate unless at least three members of the Committee are present for the duration of the meeting. The three members must include at least one Independent member, unless an Independent member would have been present but was precluded from participating in any of the business of the Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Committee is responsible for Parish Council cases, it must include at least one Parish Council representative amongst its members, but the meeting is not inquorate if the parish representative is unable to attend, even if the meeting is dealing with a Parish Council case.  
[The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812.]

(c) Hearing procedure

The Chair will confirm that all present know the procedure which the Committee will follow in determining the case.

(d) Proceeding in the absence of the member

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

- (i) the Chair will ask the Monitoring Officer whether the member has indicated his/her intention not to attend the hearing;
- (ii) the Committee will then consider any reasons which the member has provided for not attending the hearing and will decide whether it is satisfied that there is sufficient reason for such failure to attend;
- (iii) if the Committee is satisfied with the reasons, it will adjourn the hearing to another date;
- (iv) if the Committee is not satisfied with the reasons, or if the member has not given any reasons, the Committee will decide whether to consider the case and make a determination in the absence of the member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Chair will ask the member, the investigator and the legal adviser 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 will ask them to put forward reasons for so doing and ask for responses from the others and the Committee will then determine whether to exclude the press and public from all or any part of the hearing. Notes on the other issues the Committee should take into account are set out at **Schedule 1** below.

## 7 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.<sup>2</sup>

(a) The Pre-Hearing Process Summary

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<sup>2</sup> the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the investigator's report. It is possible that, in the course of their consideration, the Committee think that the member may have failed to comply with the Code of Conduct in some other manner (for example that the member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the member's office or authority into disrespect). Note that it would be unfair to proceed to consider that second case at the hearing into the first alleged failure. Where the Committee do think a possible additional or alternative failure has taken place they should refer the second case to the Monitoring Officer with a view to a separate allegation being made to the Standards Board for England.

The Chair will ask the legal advisor or the Committee Support Officer to present his/her report, highlighting any points where the member has stated that he/she disagrees with any finding of fact in the investigator's report. The Chair will then ask the member to confirm that this is an accurate summary of the issues and ask the member to identify any additional points upon which he/she disagrees with any finding of fact in the investigator's report.

- (i) If the member admits that he/she has failed to comply with the Code of Conduct in the manner described in the 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 ( see paragraph 8)
- (ii) If the member identifies additional points of difference, the Chair will ask the member to explain why he/she did not identify these points as part of the pre-hearing process. He/she will then ask the Investigator (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the 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 findings of fact which are set out in the investigator's report but which the member did not identify as a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.

(b) Presenting the investigator's report

- (i) If the investigator is present, the Chair will then ask the investigator to present his/her report and explain why he/she concluded 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 will 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 will determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chair will 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) No cross-examination will be permitted but, at the conclusion of the investigator's report and/or of the evidence of each witness,

the Chair will ask the member if there are any issues upon which the Committee should seek the advice of the investigator or the witness.

(c) The Member's response

- (i) The Chair will 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) No cross-examination will be permitted but, at the conclusion of the member's evidence and/or of the evidence of each witness, the Chair will ask the investigator if there are any issues upon which the Committee should seek the advice of the member or the witness.

(d) Witnesses

- (i) The Committee will be entitled to refuse to hear evidence from the investigator, the member or a witness unless they are satisfied that person is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
- (ii) Any member of the Committee may address questions to the investigator, to the member or to any witness.

(e) 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 will ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the investigator's report.
- (ii) Unless the Committee merely confirms the member's admission of a failure to comply with the Code of Conduct the Committee will then retire to consider in private whether the member did fail to comply with the Code of Conduct as set out in the investigator's report.
- (iii) The Committee will take its decision on the balance of probability based on the evidence which it has received at the hearing.
- (iv) The Committee's function is to make a determination on the case. 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 the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the member to produce such further evidence to the Committee.

- (v) At the conclusion of the Committee's consideration, the Committee will consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (vi) The Committee will 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.

(f) **If the member has not failed to follow the Code of Conduct**

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:

- (i) If the Committee thinks that a member has failed to comply with the Code of Conduct but not as a result of the case which the Committee has just determined, the Chair will outline the Committee's concerns and state that the Committee has referred this alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (ii) 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 legal advisor before the Committee finalises any such recommendations;

(g) **If the member has failed to follow the Code**

If the Committee determines that the member has failed to comply with the Code of Conduct in the manner set out in the investigator's report, it will then go on to consider whether it should impose any sanction on the member and, if so, what it should be.

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

- (a) The Chair will ask the investigator (if present, or otherwise the legal advisor) whether, in his/her opinion, the member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction. The list of available sanctions is set out at **schedule 2** below.
- (b) The Chair will then ask the member to respond to the investigator's advice.
- (c) The Chair will then ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.

- (d) Any member of the Committee may address questions to the investigator or to the member as necessary to enable him/her to take such an informed decision.
- (e) 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 legal advisor;
- (f) The Committee will then retire to consider in private whether to impose a sanction, if so what it should be and when it should take effect, and any recommendations which the Committee will make to the authority.
- (g) At the completion of their consideration, the Committee will return and the Chair will state the Committee's decisions together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

## **9 The close of the hearing**

- (a) 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;
- (b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Support officer will agree a formal written notice of the Committee's determination and the Monitoring Officer will arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.

## **Schedule 1**

### **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.

- 1 At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing. 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.
- 2 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 in **the Appendix** to this schedule. The committee should take into account Article 6 of the *European Convention on Human Rights* (see below). The Committee also has a duty to act fairly and within the rules of natural justice.
- 3 Article 6 says that the public may be excluded from all or part of the hearing if it is in the interest of:
  - (a) Morals;
  - (b) public order;
  - (c) justice;
  - (d) national security in a democratic society; or
  - (e) protecting young people under 18 and the private lives of anyone involved.
- 4 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 for the public to be excluded.
- 5 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:-
  - (a) in line with the law; 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) preventing crime or disorder;

- (v) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
- (vi) protecting people's rights and freedoms.

There is a clear public interest in promoting public confidence in the integrity and honesty of public authorities. Therefore 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.

- 6 The Committee must also consider Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and.....necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.
- 7 In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary' if it meets 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
- 8 The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

## **Appendix:**

### **Exempt Information:**

Part I of Schedule 12A of the Local Government Act 1972 sets out the descriptions of Exempt Information. The ones relevant to the council are summarised below using the same paragraph numbers as they have in the schedule :

1. Information regarding past, present and potential employees or office-holders;
3. Information relating to any past, present or potential tenant or occupier of Council accommodation, or applicant;
4. Information regarding any past, present or potential recipient of any service provided by the Council;
5. Information relating to any person applying for, receiving or previously in receipt of financial assistance from the Council;
6. Information relating to the adoption, care, fostering or education of any particular child;
7. Information relating to a third party's financial and business affairs;
8. The amount of expenditure relating to any particular contract entered into by the Council;
9. Terms being negotiated for any contract likely to be entered into by the Council;
10. Identification of the Council as the party tendering for a particular contract;
11. Information about the Council's industrial relations;
12. Information concerning legal advice and proceedings;
13. Information revealing the Council's intention to take legal action against a third party;
14. Action to be taken, by the Council, in connection with the prevention, investigation or prosecution of crime;
15. The identity of an informant.

N.B. With the exception of Nos. 10 and 12 all of the above categories are subject to statutory qualifications.

The regulations under s.66 Local Government Act 2000 provide for 4 more categories of exempt information. These are set out below:

1. Information relating to the personal circumstances of any person.
2. Information which must be kept confidential, for example, under a contract.
3. Information relating to national security.
4. The deliberations of the Standards Committee when hearing matters referred by an ESO.

## **Schedule 2**

### **Sanctions**

The sanctions which are available to the Committee under the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, Regulation 7, are any, or any combination, of the following :

- “(i) censure of that member;
- (ii) restriction for a maximum period of three 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 three months;
- (iv) partial suspension of that member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the standards committee;
- (v) suspension of that member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the standards committee.”

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

## Introduction

Under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Ethical Standards Officers (ESOs) can refer completed investigation reports to monitoring officers for Standards Committees to (decide) whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.

Standards Committees should be familiar with the regulations and have effective procedures in place to make sure that they can determine cases fairly and consistently.

The process for dealing with matters at a local level should be the same for all Members, no matter what political party they represent or what level of local government they represent. Standards Committees of district and unitary authorities fulfil the same role in relation to parish and town councils in their area. In this case, Standards Committees can set up sub-committees to deal with town and parish council matters.

Standards Committees only have the power to determine whether or not a member has failed to follow the Code of Conduct following a referral from an ESO. If someone makes an allegation about a member's conduct direct to the authority, it should refer the matter to The Standards Board for England for consideration, provided the person making the allegation has not done so already. If The Standards Board for England does not refer an allegation to an ESO for investigation, the Standards Committee of the authority involved may still want to consider whether general lessons can be learnt from the allegation or incident.

A decision by The Standards Board for England not to refer a matter for investigation does not prevent the Monitoring Officer having an informal discussion with the member concerned about the incident that gave rise to the allegation and how similar incidents might be avoided in future.

***Please note that the local determination regulations do not cover investigations at a local level. The Office of the Deputy Prime Minister plans to issue more regulations to provide a framework for ESOs to refer matters to monitoring officers for investigation.***

## The local determination process

The main purpose of the Standards Committee's hearing is to decide whether or not a member has failed to follow the authority's Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.

This section provides practical procedural information for Standards Committees on how to prepare for and hold a hearing and tell the relevant people of the decision.

## ESO referrals

The Standards Board for England carefully assesses all the allegations that it receives. It considers, among other things, the seriousness of the allegation and makes a judgement as to whether or not the allegation should be investigated. If The Standards Board for England believes an investigation is needed, it will pass the matter to an ESO.

ESOs work for The Standards Board for England but their responsibilities and powers are set out in the Local Government Act 2000. Neither The Standards Board for England nor the Government can interfere with an investigation by an ESO.

An ESO will investigate an allegation referred by The Standards Board for England to decide which of the following four findings is appropriate in the circumstances:

- 1 there is no evidence that the member has failed to follow any part of the Code of Conduct;
- 2 no action needs to be taken in relation to the matters investigated;
- 3 the matter should be referred to the Monitoring Officer of the relevant authority for local determination; or
- 4 the matter should be referred to The Adjudication Panel for England.

What will ESOs refer?

Matters that the ESO is likely to refer for local determination include:

- matters that are of an entirely local nature and do not affect broader national issues; and
- matters that do not appear to need the heavier penalties available to The Adjudication Panel for England.

However, ESOs will refer matters on a case-by-case basis as all the relevant circumstances will need to be considered. An ESO is unlikely to refer a case where it would be difficult or inappropriate to try to resolve it locally, for example, if there is an allegation that serious bullying and harassment has taken place in the authority.

When an ESO refers a matter to the Monitoring Officer of the relevant authority, the Monitoring Officer must arrange for the authority's Standards Committee to consider the ESO's report and determine the matter.

Under the local determination regulations, an ESO will only refer a matter to a Standards Committee after completing his or her investigation. Standards Committees should not re-open the investigation. However, the member who the allegation has been made about has the right to give relevant evidence to the Standards Committee and, if more evidence becomes available after the completion of the ESO's investigation, the Standards Committee may consider that evidence during the course of its hearing.

## **Timing of the Standards Committee hearing**

The Standards Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the ESO's report.

When the Monitoring Officer receives a report, he or she must give a copy of that report to the member who the allegation has been made about.

Normally, hearings should take place at least 14 days after the member who the allegation has been made about receives a copy of the ESO's report from the Monitoring Officer. However, the hearing can be held less than 14 days after the member receives a copy of the ESO's report if the member agrees.

If the member who the allegation has been made about does not go to the hearing, the Standards Committee may consider the ESO's report in the member's absence. If the Standards Committee is satisfied with the member's reason for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

If the Standards Committee does not hear the matter within three months of receiving the ESO's report, the committee will be failing in its legal duty and may face judicial review proceedings. The committee cannot refer the matter back to The Standards Board for England.

### *Scheduling a hearing*

Except in complicated cases, Standards Committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, committees should bear in mind that late-night hearings are not ideal for effective decision-making.

## **The pre-hearing process**

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any of the findings of fact in the ESO's report;
- decide whether or not those disagreements are significant to the hearing; • decide whether or not to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearing that should be held in private; and
- decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

It is important for everyone involved to recognise that the pre-hearing process will only deal with procedural issues.

### *Format*

The pre-hearing process should usually be carried out in writing, although occasionally a face-to-face meeting between the Chair, the people involved and their representatives may be necessary.

#### The member's response

The officer providing administrative support to the Standards Committee, in consultation with the Chair of the committee, should write to the member concerned to propose a date for the hearing, outline the hearing procedure and the member's rights. They should also ask for a written response from the member, within a set time, to find out whether or not he or she:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person;
- wants to give evidence to the Standards Committee, either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private;
- wants any part of the ESO's report or other relevant documents to be withheld from the public; and
- can come to the hearing.

We recommend that Standards Committees ask Members to make clear all the disagreements with the findings of fact in the ESO's report during this pre-hearing process. This will allow the committee to decide what witnesses will be needed. Standards Committees should not allow Members to raise new disagreements over findings of fact in the ESO's report at the hearing unless there are good reasons for doing so, such as new evidence becoming available.

There are model forms to help the member respond to the Standards Committee in Appendix 1. These include forms to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence for the Standards Committee (Form B).

#### *The ESO's response*

The Standards Board for England recommends that the Standards Committee also invites the relevant ESO to comment on the member's response, within a set time, to say whether or not he or she:

- wants to be represented at the hearing;
- wants to call relevant witnesses to give evidence to the Standards Committee;

- wants any part of the hearing to be held in private; and
- wants any part of the ESO's report or other relevant documents to be withheld from the public.

#### *Other witnesses*

The Standards Committee may also arrange for any other witnesses to be present who it feels 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.

#### *The pre-hearing process summary*

When the Standards Committee has received a response from the member concerned and the ESO, the Chair of the Standards Committee, in consultation with the legal advisor to the committee, should then write to everyone involved at least two weeks before the hearing to:

- set the date, time and place for the hearing;
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;
- note whether the member concerned or the ESO will go to or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

There is a checklist for this pre-hearing process summary document in Appendix 1 (Form F).

### **The hearing**

Standards Committees should work fairly and in a way that encourages the confidence of members and the public. The model hearing procedures (in Appendix 2) are intended to give Standards Committees a consistent approach to determining matters locally. The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

#### *The Standards Committee*

Under current law, a Standards Committee may not delegate (allocate responsibility for) determination of a case to a sub-committee. However, a case relating to a town or parish councillor can be delegated to a sub-committee which has been set up to deal with town and parish council matters. All members of the Standards Committee may take part in a hearing if they choose. However, we recommend that a small number of members

(three or five) take part in the determination as it is fairer and more efficient to hold a hearing before a small group.

Proposed amendments in the Local Government Bill, which is currently before Parliament, will allow Standards Committees to formally delegate responsibility for local determinations to a sub-committee.

Currently, at least three members of the Standards Committee, including at least one who is an independent member of the committee, must be present at each meeting. If a case relates to a parish councillor, one of the committee members present must be a parish councillor.

If the proposed amendments in the Local Government Bill come into force, we recommend that the Standards Committee sets up a panel of three or five members to make determinations on cases of misconduct.

When it is determining a case, the Standards Committee should be recognised as truly fair and politically unbiased, so that members of the public and members of the authority have confidence in its procedures and findings.

#### *Standards Committee determinations*

To encourage confidence and remove any perception of political interference, we recommend that one of the independent members of the Standards Committee chairs the hearing.

#### *Representatives*

The member who the allegation has been made about may choose to be represented by counsel or a solicitor, or any other person they wish. If the member concerned wants to have a non-legal representative, the member must tell the Standards Committee in advance. The Standards Committee should normally give permission for Members to be represented by a person they choose, but may refuse permission if the representative is directly involved in the matter being determined.

The Standards Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

#### *Witnesses*

Although the member who the allegation has been made about is entitled to call any witnesses he or she wants, the Standards Committee may limit the number of witnesses if it believes the number called is unreasonable.

The Standards Committee also has the right to govern its own procedures as long as it acts fairly. For this reason, the Standards Committee may choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Standards Committee to reach its decision.

## *Evidence*

The Standards Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned.

The member who the allegation has been made about must be allowed to make representations, either verbally or in writing. If the member prefers, these representations can be made through his or her nominated representative. The member who the allegation has been made about must also be given the opportunity to give evidence to the Standards Committee and call witnesses to give evidence.

In many cases, the Standards Committee may not need to consider any evidence other than the ESO's report. If more evidence is needed or if people do not agree with certain findings of fact in the ESO's report, the Standards Committee may need to hear from witnesses.

The Standards Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the member who the allegation has been made about or the ESO or their representatives. The Standards Committee can ask that these questions be directed through the Chair.

## **The finding of the Standards Committee**

Following its hearing, the Standards Committee can make one of the following findings:

- the member has not failed to follow the authority's Code of Conduct;
- the member has failed to follow the authority's Code of Conduct, but no action needs to be taken; or
- the member has failed to follow the authority's Code of Conduct and should be penalised.

## **Penalties**

If the Standards Committee finds that a member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority;
- restrict the member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the member for up to three months; or
- suspend or partly suspend the member for up to three months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation

that the Standards Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee.

Suspension or partial suspension will normally start immediately after the Standards Committee has made its decision. However, if the Standards Committee chooses, the penalty may start at any time up to six months following its decision. This may be appropriate if the penalty would otherwise have little effect on the member, for example, in the case of a suspension or partial suspension, if there are no authority or committee meetings which the member would normally go to in the period following the conclusion of the hearing.

Periods of suspension or partial suspension set by a Standards Committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under Section 85 of the Local Government Act 1972.

### *Deciding a penalty*

When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the member's behaviour. 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? 11
- 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?

So, for example, if a member has repeatedly or blatantly misused the authority's information technology resources, the Standards Committee may consider withdrawing those resources from the member.

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.

Penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a member's ability to carry out his or her responsibilities as an elected representative or co-opted member.

There may be other factors, specific to the local environment, that the Standards Committee may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Standards Committee may want to consider decisions made by other Standards Committees and case tribunals drawn from The Adjudication Panel for England that deal with similar types of cases. To help Standards Committees, we will put appropriate summaries of Standards Committee decisions on our website at [www.standardsboard.co.uk](http://www.standardsboard.co.uk)

### **Notice of the Standards Committee's findings**

The Standards Committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the committee will normally also draft minutes of the meeting.

As soon as is reasonably practical after the hearing, the Standards Committee must give its full written decision to the relevant people. We recommend that the Standards Committee give its full written decision to those people within two weeks. The relevant people include:

- the member who is the subject of the finding;
- the ESO concerned;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

*Making the findings public*

The Standards Committee must also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

If the Standards Committee finds that a member did not fail to follow the authority's Code of Conduct, the public summary must say this, and give reasons for this finding. In these cases, the member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.

If the Standards Committee finds that a member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the member failed to follow the Code, outline what happened and give reasons for the Standards Committee's decision not to take any action.

If the Standards Committee finds that a member failed to follow the Code and it sets a penalty, the public summary must say that the member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Standards Committee.

The Standards Committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

### **Full written decision format**

For consistency and thoroughness, we recommend that the Standards Committee use the following format for its full written decision. A model format for the full written decision is available on our website at [www.standardsboard.co.uk](http://www.standardsboard.co.uk)

The front cover of the Standards Committee's full written decision should include:

- the name of the authority;
- the name of the member who the allegation has been made about;
- the name of the person who made the original allegation (unless there are good reasons for keeping his or her identity confidential);
- case reference numbers of the principal authority and The Standards Board for England;
- the name of the Standards Committee member who chaired the hearing;
- the names of the Standards Committee members who took part in the hearing;
- the name of the Monitoring Officer;
- the name of the ESO who referred the matter;
- the name of the clerk of the hearing or other administrative officer;

- the date of the hearing; and
- the date of the report.

The Standards Committee's full written decision should include:

- a summary of the allegation;
- the relevant section or sections of the Code of Conduct;
- a summary of the evidence considered and representations made;
- the findings of fact, including the reasons for them;
- the finding as to whether or not the member failed to follow the Code of Conduct, including the reasons for that finding;
- the penalties applied, if any, including the reasons for any penalties; and
- the right to appeal.

### **Public access to hearings and documents**

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.

**Confidential information and 'exempt information'** The regulations state that a modified version of the rules about access to information contained in Part VA of the Local Government Act 1972 should apply to Standards Committees making local determinations. This means that there is a clear presumption that hearings should be held in public. There are two circumstances in which hearings (or parts of hearings) can or should be held in private.

1 A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.

2 The law also gives the Standards Committee the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the Local Government Act 1972 (see Appendix 3). However, the regulations also provide for four other categories of 'exempt information'.

a Information relating to the personal circumstances of any person.

b Information which must be kept confidential, for example, under a contract.  
c Information relating to national security.

d The deliberations of the Standards Committee when hearing matters referred by an ESO.

The rules about confidential information are different from the rules about 'exempt information'. Standards Committees must hold some parts of a meeting in private where confidential information is likely to be revealed.

However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

#### *Deciding to withhold 'exempt information'*

Standards Committees should carefully consider any decision to withhold exempt information from the public. Although the legal position is not entirely clear, The Standards Board for England advises that Standards Committees should follow Article 6 of the European Convention on Human Rights, as there may be an obligation to do so under Section 6(1) of the Human Rights Act 1998. But, in any case, the Standards Committee has a duty to act fairly and in line with the rules of natural justice.

Please note that Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved. Article 6 is discussed in Appendix 4.

If a Standards Committee decides to exclude the public to prevent 'exempt information' being revealed, it should only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt information', the public will only have to be excluded while that witness is giving evidence.

If evidence is heard in private, people should be warned not to mention that evidence during the public parts of the hearing, or outside the hearing. The Standards Committee may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

#### *Access to documents*

The statutory rules about access to information which apply to Standards Committees do not simply relate to public attendance at hearings. They also establish the general principle that the agenda and reports to be discussed should be available for public inspection before and during a hearing. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, must be available for public inspection for a specific period of up to six years after that hearing has taken place. The ESO's report will be one of the reports before the Standards Committee.

The regulations also state that the agenda, reports and minutes of district and unitary authority Standards Committee meetings must be sent to any parish councils involved.

Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However, an officer appointed by the authority has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private. The Standards Board for England recommends that this power should be exercised where one of the people involved has requested that a document be kept confidential.

After a hearing, sections of the committee's reports which relate to parts of the hearing held in private will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.

When considering whether to exclude the public from a hearing, the Standards Committee will also need to say which parts of the reports before the committee are not to be made available for public inspection.

### **Appeals to The Adjudication Panel for England**

The member who is the subject of a Standards Committee finding may apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding. Please see page 48 for contact details.

The President must receive the member's written application within 21 days of the member receiving notice of the Standards Committee's decision. In this application, the member must outline the reasons for the proposed appeal and whether or not he or she wants the appeal carried out in writing or in person.

When deciding whether or not to grant permission to appeal, the President will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or in part.

The President will give the member concerned his or her written decision within 21 days of receiving the application. The President will also give his or her written decision to:

- the ESO concerned;
- the Standards Committee that made the original finding;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

If the President refuses to give permission, he or she will explain the reasons for that decision.

### **Appeal tribunals**

If permission is granted, the President of The Adjudication Panel for England will arrange for a tribunal to deal with the member's appeal. The tribunal will be made up of at least three members appointed by the President and may include the President.

Any member of The Adjudication Panel for England with an interest in the matter may not be a member of the appeal tribunal. Likewise, any member of The Adjudication Panel for England who has been a member or officer of the authority concerned within the last five years cannot take part.

If the Member does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the member at least 21 days' notice of the date of the hearing.

The Member can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the member wants to have a non-legal representative, the member must get permission from the tribunal beforehand, who may prevent that person acting as a representative if he or she is directly involved in the case.

The appeal tribunal can decide its own procedures. It is likely, however, that both the ESO and the Standards Committee will be given the opportunity to make representations in relation to the appeal and, in an appropriate case, to go to or be represented at the appeal hearing.

If the Member agrees to have the appeal carried out in writing, the tribunal may still decide to hold a hearing at which the member can attend in person and be represented as outlined above. However, the tribunal may choose to carry out the appeal entirely through written representations.

If, after being given reasonable notice, the member fails to go to or be represented at an appeal hearing, the tribunal may determine the matter in the member's absence. However, if the tribunal is satisfied that there is a good reason for the member's absence, it should postpone the hearing to another date.

#### *Outcome of the appeal*

The appeal tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the Standards Committee. If the tribunal upholds the Standards Committee's finding, or part of the finding, it may:

- approve the penalty set by the Standards Committee;
- require the Standards Committee to set a penalty if it has not already done so; or
- require the Standards Committee to set a different penalty to that already set.

If the tribunal dismisses the finding of the Standards Committee, the decision and any resulting penalty will no longer apply. The Standards Committee must act on any directions given by the appeal tribunal.

#### Notice of the appeal tribunal's decision

The appeal tribunal will give written notice of its decision to:

- the member who is the subject of the decision;
- the ESO concerned;
- the Standards Committee that made the original finding;
- the Standards Committees of any other authorities concerned;

- any parish councils concerned; and
- any person who made the allegation.

The tribunal will also publish a summary of its decision in one or more of the newspapers circulating in the area of the authorities concerned.

### **Costs**

Members are responsible for meeting the cost of any representation at a Standards Committee hearing or appeal tribunal. The Office of the Deputy Prime Minister is looking into allowing authorities to cover the costs of Members going to and being represented at hearings and appeal tribunals.

### **The Role of the Monitoring Officer**

Monitoring officers need to be aware of the potential conflicts involved in advising the Standards Committee and advising Members.

### **Advising the Standards Committee**

It is important that Standards Committees receive high quality, independent advice. For this reason, we recommend that a Monitoring Officer should be the main advisor to the Standards Committee, unless they have an interest in the matter that would prevent them from performing this role independently. If this situation arises, a Monitoring Officer should arrange for another appropriately qualified officer to advise the Standards Committee.

In advising the Standards Committee, the Monitoring Officer or other legal advisor's role is to:

- make sure that members of the Standards Committee understand their powers and procedures;
- make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;
- make sure that the member who the allegation has been made about understands the procedures the Standards Committee will follow;
- provide advice to the Standards Committee during the hearing and their deliberations; and
- help the Standards Committee produce a written decision and a summary of that decision.

### **Advising Members**

Monitoring officers play an important role in advising their Members on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the Standards Committee at a later stage. However, conflicts of interest are not likely to arise simply from informal discussions between Members and monitoring officers.

We recommend that monitoring officers consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise Members; or
- continuing to advise Members, identifying possible scenarios that may lead to future conflicts, and reassuring themselves that if their advice could be material to an investigation, they have another appropriately experienced officer who is prepared to support the Standards Committee in its hearings and deliberations.

Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the Standards Committee.