

STANDARDS COMMITTEE (LOCALISM ACT 2011)

**30 AUGUST 2012
AGENDA
5.30 PM**

**COUNCIL CHAMBER,
CIVIC OFFICES,
CENTRAL MILTON KEYNES**

<http://cmis.milton-keynes.gov.uk/CmisWebPublic>

Councillors: Bradburn, Eastman, P Geary, Jury, Miles, O'Neill, P Williams and Zealley and two Conservative vacancies

If you have any enquires about this agenda please contact Tina Milner, Committee Manager, Tel: (01908) 254737 or E-mail: Tina.Milner@milton-keynes.gov.uk

STANDARDS COMMITTEE

1.1 Terms of Reference

- 1.1.1 To promote and maintain high standards of conduct by Members and co-opted members of Milton Keynes Council.
- 1.1.2 To assist parish councils within Milton Keynes to promote and maintain high standards of conduct by their members and co-opted members
- 1.1.3 To grant dispensations in respect of requests made under s33 Localism Act 2011
- 1.1.4 To establish and maintain arrangements under which allegations against all such members can be investigated and decided upon in accordance with the requirements of Chapter 7 (Standards) of the Localism Act 2011 within the following framework:
 - (a) That Assessment Sub-Committees be established and be delegated power, after consultation with the Independent Person and, if a Parish matter, in consultation with a co-opted Parish Member, to determine whether or not a complaint merits referral to the Monitoring Officer to undertake a formal investigation or other action
 - (b) That Hearing Sub-Committees be established and, after consultation with the Independent Person and, if a Parish matter, in consultation with a co-opted Parish Member,
 - (i) be delegated power to undertake a hearing to determine whether or not a Member has failed to comply with the Code of Conduct and,
 - (ii) be delegated such of the Council's powers as can be delegated to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct.
 - (c) That Appeals Sub-Committees be established and be delegated power, after consultation with the Independent Person and, if a Parish matter, in consultation with a co-opted Parish Member, to adjudicate on appeals against the findings of Hearing Sub-Committee on the grounds that;
 - The procedure has been wrongly applied;
 - New evidence has come to light since the hearing which, if disclosed to the Sub-Committee, may result in a different outcome; or
 - The Sub-Committee has misdirected itself in law
 - (d) That the Monitoring Officer be appointed as the Proper Officer to receive and administer complaints of failure to comply with the Code of Conduct;

1.2 Membership

- (a) **Appointment.** The Standards Committee will consist of 10 members appointed by the Council, at or as soon as reasonably practicable after the Annual Council meeting, in accordance with the proportionality rules of the Local Government and Housing Act 1989.

There shall be the power to co-opt between two and four members who shall be parish councillors within Milton Keynes but who may not otherwise be members of Milton Keynes Council.

- (b) **Chair.** The Chair and Vice-Chair of the Committee shall be appointed annually by the Committee at its first meeting following the Annual Council meeting and before proceeding to any other business.
- (c) **Quorum.** Except where authorised by a statute or ordered by the Council, business shall not be transacted at a meeting of the Committee unless at least three Members are present.

1.3 Functions

The Standards Committee will exercise the following functions and those matters which flow from them, which are not executive functions by virtue of Schedule 1 or 2 to the Functions Regulations (as may be currently amended), as listed below.

In acting under the Committee's terms of reference and in exercising responsibility for those functions listed below, the Authority's Procedure Rules, any limitations on authority placed by Council and all legislative requirements and applicable rules of law must be complied with.

<i>Function</i>	<i>Provision of Act or Statutory Instrument</i>
A. Functions relating to standards of conduct by members and co-opted members of Milton Keynes Council and the parish councils within the Borough	Chapter 7 of the Localism Act 2011

AGENDA

1. Election of Chair

To consider electing a Chair of the Committee for the Council year 2012/13.

2. Appointment of Vice-Chair

To consider appointing a Vice-Chair of the Committee for the Council year 2012/13.

3. Welcome and Introductions

4. Apologies

5. Minutes

To approve, and the Chair to sign as a correct record, the Minutes of the Special Standards Committee meeting held on 5 April 2012 (Item 5) (**Pages 6 to 8**).

6. Disclosure of Interests

Members to declare any disclosable pecuniary interests, or personal interests (including other pecuniary interests), they may have in the business to be transacted, and officers to disclose any interests they may have in any contract to be considered.

7. Public Involvement

(a) Deputations and Petitions

No deputations have been submitted for consideration at this meeting.

Any petitions received will be reported at the meeting.

(b) Questions from Members of the Public

To receive questions and provide answers to questions from members of the public.

8. Terms of Reference

To consider the Committee's Terms of Reference as set out above (**Pages 2 to 3**) and receive a presentation of the new Standards Committee (Item 8) (**Pages 9 to 23**).

9. Co-option of Parish Members

To consider Item 9 (**Pages 24 to 25**).

10. Independent Persons

To consider Item 10 (**Pages 26 to 28**).

11. Determination of Complaints

To consider Item 11 (**Pages 29 to 105**).

12. Dispensations

To consider Item 12 (**Pages 106 to 108**).

Minutes of the meeting of the STANDARDS COMMITTEE held on TUESDAY 19 JUNE 2012 at 6.00 pm

Present: Mr C Fogden (Chair)
Councillors Jury, P Geary and Morris, Parish Councillor Livingstone and Mr D Anderton

Officers: P McCourt (Assistant Director [Law and Governance]), K Hulatt (Solicitor) and T Milner (Committee Manager)

Apologies: Councillors Marland and Miles, Parish Councillors Geddes and Wilkes, Mr R Moore and Mr C Rose

ST01 ELECTION OF CHAIR

Mr C Fogden was proposed as Chair by Councillor Livingstone. There being no further nominations, he was duly elected as Chair for the year of 2012/13 for the current Standards Committee.

ST02 APPOINTMENT OF VICE-CHAIR

Mr D Anderton was proposed as Vice-Chair by Mr C Fogden. There being no further nominations, he was duly appointed as Vice-Chair for the year of 2012/13 for the current Standards Committee.

ST03 WELCOME AND INTRODUCTIONS

The Committee heard from the Assistant Director, Law and Governance on the implementation dates for the sections of the Localism Act 2011 relating to governance and standards, and further that transitional arrangements had been put into place to allow independent members to apply for the new independent person positions under the new law.

The Committee was informed that a Standards Working Group and Member briefing was arranged for 20 June 2012, that included Councillor C Williams, Morris and Miles to discuss and put proposals forward to Council on 11 July 2012:

1. How the Council will put in place arrangements for dealing with complaints about Members and Parish Councillors from 1 July 2012.
2. That the Council must adopt a new Code of Conduct, including what interests to register and any arrangements to disclose a conflict of interest at meetings for that date for the Council to view options at its meeting on 11 July 2012.

ST04 MINUTES OF PREVIOUS MEETING

RESOLVED -

That the Minutes of Standards Committee held on 5 April 2012, be approved and signed by the Chair as a correct record, subject to including Mr R Moore and Mr C Rose as present.

ST05 CASE UPDATE

The Committee considered the current Case update including the cost of any investigations.

RESOLVED -

1. That the complaints status table be noted.
2. That Case SC/03/12 be closed.
3. That Case SC/02/12 be considered by the Assessment Sub-Committee on 27 June 2012.
4. That the estimated cost of £4814.94 for Case SC/02/11 be noted.

ST06 RECENT CASES

The Committee considered the recent cases, status of referrals and investigations.

RESOLVED –

1. That the outcome of recent Cases, SC/05/11, SC/07/11, SC/06/11, SC/09/11 and SC/10/11 be noted.
2. That the recommendation made by the Hearing Sub-Committee be unanimously endorsed, including the recommendation to Council that Mr P Bartlett's 'Alderman' status be removed due to the severity of the matters and use of title in regard to a complaint.
3. That a report be made to the Council, when addressing the recommendation regarding the removal of the Alderman title for Alderman Bartlett setting out:
 - (a) details of the process to be adhered to; and
 - (b) comprehensive details including history, case details and a clear definition with regard to the title and description of 'Alderman' status.

ST07**IMPLEMENTATION OF THE LOCALISM ACT AND STANDARDS**

The Committee considered the progress against the provisions of Chapter 7 of the Localism Act 2011, in preparation for implementation by the Council for 1 July 2012.

RESOLVED -

1. That subject to Regulations providing for a differing implementation date for Part 7 of the Localism Act 2011, the Committee be dissolved with effect from 30 June 2012.
2. That the Committee noted the information on progress of implementation of Chapter 7 (Standards) of the Localism Act 2011.

ST08**DATE OF NEXT MEETING**

The Committee will be dissolved on 30 June 2012 or on the eve of the coming into force of the relevant provisions of Chapter 7 of the Localism Act, whichever is the later.

Although there may be a requirement for Sub-Committee meetings prior to that date, this would be the final meeting of the Committee.

THE CHAIR CLOSED THE MEETING AT 7.08PM



The New Standards Regime

30 August 2012

Milton Keynes Council

ITEM
8

Standards – A quick overview

- Standards for England abolished 31 March 2012
- Ceased to exercise regulatory functions on 31 January 2012
- New regime came into force 1 July 2012
- Transitional regulations & regulations defining disclosable pecuniary interests published 8 June 2012

Standards – A quick overview

- Still need to adopt a code
- Still need to have arrangements for dealing with complaints
- Still have duty to promote high standards of conduct
- There are still provisions for registration and declaration of interests

Standards Committee TOR

- Establish and maintain arrangements for the determination of complaints that members (both Parish and Principal Council) have failed to adhere to their Code of Conduct
- Co-opted Parish members
- Independent Persons
- Grant of dispensations

Arrangements for dealing with complaints – making it work

- retention of dedicated Standards Committee – 10 elected Members
- NOTE: has to reflect political balance (S101 LGA 1972)

PLUS:

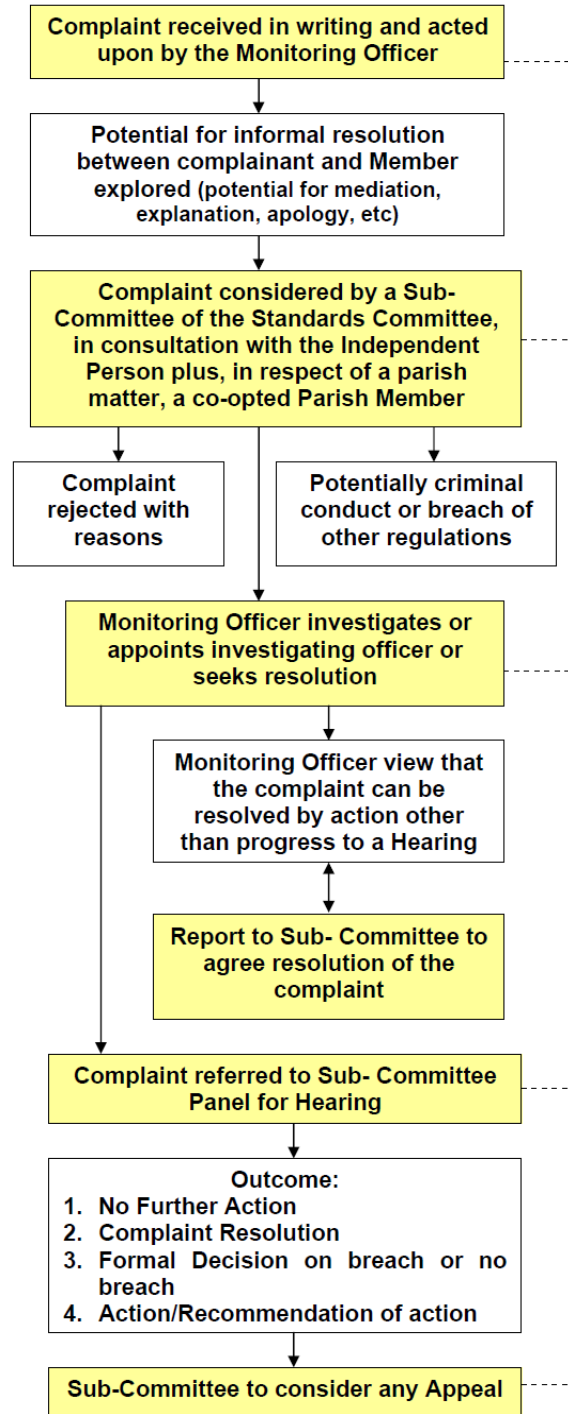
- Between two and four co-opted parish representatives

What's left?

Arrangements for dealing with complaints

- arrangements must set out: -
 - how will deal with allegations
 - how will decide if allegation requires investigation
 - how will decide if has been failure to comply with relevant code
 - what action it might take as a result of failure to comply with code

Flowchart - Procedure



- Process via Monitoring Officer
 - Forms on website
- Decisions by Members
 - In consultation with
 - Independent Person
 - Parish Co-Opted Member

What's left?

Sanctions

- Limited range of sanctions now available
- No statutory sanctions
- Power of self regulation
(*R v Broadland DC ex parte Lashley*)

NOTE: power of suspension removed from 7 June

What options are there?

- naming and shaming
- report to full Council – is censure more effective if done by full Council?
- remove from outside appointments (can be delegated)
- recommend Group Leader to remove from Cabinet or Committees
- recommend Council to replace as Leader
- withdraw facilities
- bar from the offices and put on single point of conduct

NOTE:

Milton Keynes Council sanctions have been delegated to Standards Committee by Council (but Standards Committee can refer back to Council)

Parish Council sanctions a matter for the Parish Council

The Independent Person

- Must appoint at least one Independent Person
 - Advertisement, application and appointment
 - Can be paid allowances and expenses
- Appointment must be approved by Council
- Appointment of Independent Person a joint exercise
 - Interviews 17 July 2012

The Independent Person

Functions of Independent Person

- **MUST** be consulted by authority before it makes a decision on an investigated allegation (i.e. at hearing stage)
- **MAY** be consulted by authority in respect of an allegation in any other circumstances - under our procedures will be consulted at initial filtering stage and where a no breach finding made before complaint is closed
- **MAY** be consulted by member (including parish councillor) who is subject to an allegation – but can't comment on merits or may be conflicted out at later stage
- **CANNOT** chair Standards Committee or vote – **ADVISORY ROLE ONLY**

What are Disclosable Pecuniary Interests?

- Defined by Regulations: the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
 - Employment, office, trade, profession or vocation carried on for profit or gain
 - Sponsorship: payment or other financial benefit in preceding 12 months towards election expenses or expenses in carrying out duties as a member
 - Extant contracts for goods services or works – including with spouse/partner
 - Beneficial interests in land in the Council's area including licences for a month or more

What are Disclosable Pecuniary Interests?

- Corporate tenancies where Council is landlord and tenant is a body in which you have a beneficial interest
- Beneficial interest in securities of a body which has a place of business or land in Council's area where:-
 - Total nominal (face) value exceeds £25,000 or one hundredth of total issued share capital or
 - If share capital is more than one class, total nominal value of shares in any one class exceeds one hundredth of total issued share capital

NOTE: REGISTRATION AND DISCLOSURE REQUIREMENTS APPLY NOT ONLY TO YOUR INTERESTS BUT ALSO THOSE OF SPOUSE/PARTNER

Dispensations

- revised grounds for granting dispensations
- parish councils now responsible for granting their own dispensations
- can be granted for any period up to 4 years

NOTE: Town/Parish Councils

Town/Parish Councils need to develop own procedures for dealing with dispensation requests

What's new?

Dispensations

GROUNDS:

1. So many members have DPIs that it would impede the transaction of the business
2. Without the dispensation the strengths of political groups on the body would be so upset as to alter the likely outcome of any vote on the matter
3. Without the dispensation, every member of Cabinet would have DPI prohibition from participating
4. The grant of the dispensation would be in the interests of the inhabitants of the authority's area

OR

5. It is otherwise appropriate to grant the dispensation

- 3.3 The statutory provisions for Standards Committees came to an end on 1 July 2012, and from that date onwards, it has been a matter for Milton Keynes Council to determine how best to discharge its duties in respect to promoting and maintaining high standards of conduct and also put in place arrangements under which allegations of any breach of a Code of Conduct may be investigated and determined.
- 3.4 On 11 July 2012 a new Code of Conduct and arrangements for the determination of complaints were agreed by the Council. These arrangements included the terms of reference of the new Standards Committee, which include;
- “There shall be the power to co-opt between two and four members who shall be parish councillors within Milton Keynes but who may not otherwise be members of Milton Keynes Council.”
- 3.5 The arrangement also set out the role for Parish Members, both to attend, in a consultative, non voting role, at the initial decision in respect of any complaint against a parish member and also to attend, in a consultative non voting role, the determination of any investigation carried out under the arrangements.
- 3.6 This is a time of significant change in respect of the Standards agenda and as a result, it is suggested that members of the Committee may wish to consider re-appointing those parish members who sat on the Committee previously, as they are familiar with the Standards regime generally and also with the changes to the law in this area.
- 3.7 It is suggested that as the one year term reaches its end a recruitment exercise is undertaken, approaching all parish/town/community councils in Milton Keynes and requesting that members be put forward by parish councils to serve as co-optees on the Committee. The Standards Committee is to consider the list of potential co-optees and recommend co-options to the Council at the Annual Business Meeting of the Council in May 2013.

Background Papers: None

INDEPENDENT PERSONS

Report Author Ifty Ali - Deputy Monitoring Officer, 01908 252478
Acting AD Law and Governance

1. Purpose

- 1.1 To inform the Standards Committee of the recruitment exercise undertaken by Central Bedfordshire, Bedford Borough, Luton, Milton Keynes and the Fire Authorities in respect of Independent Persons.

2. Recommendations

- 2.1 That the Council be recommended that, subject to transitional provisions contained in the Localism Act 2011 (Commencement No. 6 and Transitional Savings and Transitory Provisions) Order 2012 (as amended), the following persons be appointed as Independent Persons for a period of four years:
1. Maureen Briggs
 2. Christopher Ensor
 3. Vasco Fernandes
 4. Christopher Fogden
 5. John Jones
 6. Michael Collins Jones
 7. Martin Leppert
 8. Timothy Mainwaring
 9. John Mackay
 10. Alexandra di Stefano;
- 2.2 That it be noted that Christopher Fogden, as a previous Independent Member for Milton Keynes Council and appointed after 24 July 2012, will only be able to act as an Independent Person for Milton Keynes Council until 1 July 2013.
- 2.3 That approval in principle be given to a system of payment which includes a retainer for each Independent Person, 1/5 paid by each authority, and a 'per case' fee paid by the instructing authority.
- 2.4 That the agreement of payment arrangements be delegated to the Monitoring Officer, in line with the principle at 2.3 above.

- 2.5 That the Monitoring Officer report back to the Committee on payment arrangements and also provide a regular update of payments to Independent Persons to each meeting of the Standards Committee.
- 2.6 That the Monitoring Officer inform the appointed Independent Persons of their appointment and terms of engagement.
- 2.7 That the Monitoring Officer, in consultation with the other authorities, agree training provision for the Independent Persons.

3. Background

- 3.1 The Localism Act 2011 states that a relevant authority must include, within its arrangements for the determination of complaints provision for the appointment of at least one Independent Person whose views are to be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate and whose views may be sought by the authority in relation to the allegation, by a member or co-opted member of the authority if that person's behaviour is the subject of an allegation and by a member or co-opted member of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.
- 3.2 The original legislation was drafted in such a way as to prevent any person who was a member, co-opted member or employee of the authority in the last 5 years from becoming an Independent Person. This included Independent Members of Standards Committees.
- 3.3 After some lobbying, the government altered its position on this, allowing Independent Persons who had been Independent Members to become and remain Independent Persons, if appointed prior to 24 July 2012, indefinitely and if appointed after 24 July 2012, until 1 July 2013.
- 3.4 Due to the original position, and in order to be able to capture and retain some of the skills and experience gained by Independent Members, Central Bedfordshire, Bedford Borough, Luton and Milton Keynes Council's, along with Bedfordshire and Luton Combined Fire Authority and Buckinghamshire and Milton Keynes Combined Fire Authority agreed to undertake a joint recruitment exercise, in order to establish a pool of Independent Persons, some of whom may have acted as Independent Members in the past and therefore could not act for the authority for which they had been a member, but may act for the other authorities.
- 3.5 This exercise was undertaken and interviews undertaken by elected members from Bedford, Central Bedfordshire, Milton Keynes and Luton produced a list of 10 Independent Persons to form the 'pool'.

Milton Keynes Council Arrangements

- 3.6 Milton Keynes Council's arrangements require that as well as being available for consultation at the determination stage of a complaint that has been investigated, the Independent Person should also be present and consulted at the initial assessment of any complaint by the Sub-Committee.

- 3.7 In addition to these roles, it should be noted that any person who is the subject of a complaint may contact an Independent Person to 'seek their views' in respect of the complaint.
- 3.8 In order to avoid any potential conflicts of interest, the Independent Person consulted by the Authority should be different to the Independent Person consulted by the subject of the complaint.

Appointments

- 3.9 It is proposed that each authority will appoint all 10 Independent Members, in order to allow for a wide pool and to ensure that availability and potential conflicts of interests can be managed. One of the authorities has decided that it will only make two appointments, which will need to be considered when payment terms are agreed.

Payment arrangements

- 3.10 Payment arrangements will need to be agreed between the authorities to ensure a consistency of approach. It is proposed that the Independent Persons should be paid on a case basis, therefore any Independent Person sitting on the initial assessment of a matter will receive a payment, whether or not that case progresses to a hearing.
- 3.11 It is further proposed that the subject of a complaint is given, at an early stage, the contact details of one of the Independent Persons (a rota system is to be agreed with the other authorities). If the subject member makes contact with this person and discusses the matter with them, the Independent Person will be required to fill out a contact sheet, triggering payment. If the Independent Person is not contacted, no payment will be made.
- 3.12 A potential payment of a £300 annual retainer to each Independent Person (paid by 5ths from each authority in the sharing arrangement) and a £50 case fee is currently being discussed.

Background Papers: None

DETERMINATION OF COMPLAINTS

Report Author Ifty Ali - Deputy Monitoring Officer, 01908 252478
Acting AD Law and Governance

1. Purpose

1.1 To discuss the determination of complaints by the Standards Committee.

2. Recommendations

2.1 That it be noted that a number of complaints have been received which require determination.

2.2 That it be noted that as soon as training has been undertaken, Assessment Sub Committees will be convened to consider the pending complaints.

2.2 That the Monitoring Officer arrange Standards Committee training as soon as possible, to be undertaken by co-opted Parish Members and for Independent Persons to be invited as appropriate.

2.3 That the flow chart for the determination of complaints, as attached at Appendix 1, be noted.

2.4 That it be noted that should a complaint be referred for investigation, Standards for England guidelines (Appendix 2 and 3) will be followed, pending a full update of the policies and procedures for the investigation and determination of complaints (current version at appendix 4), to be submitted to the next Standards Committee meeting.

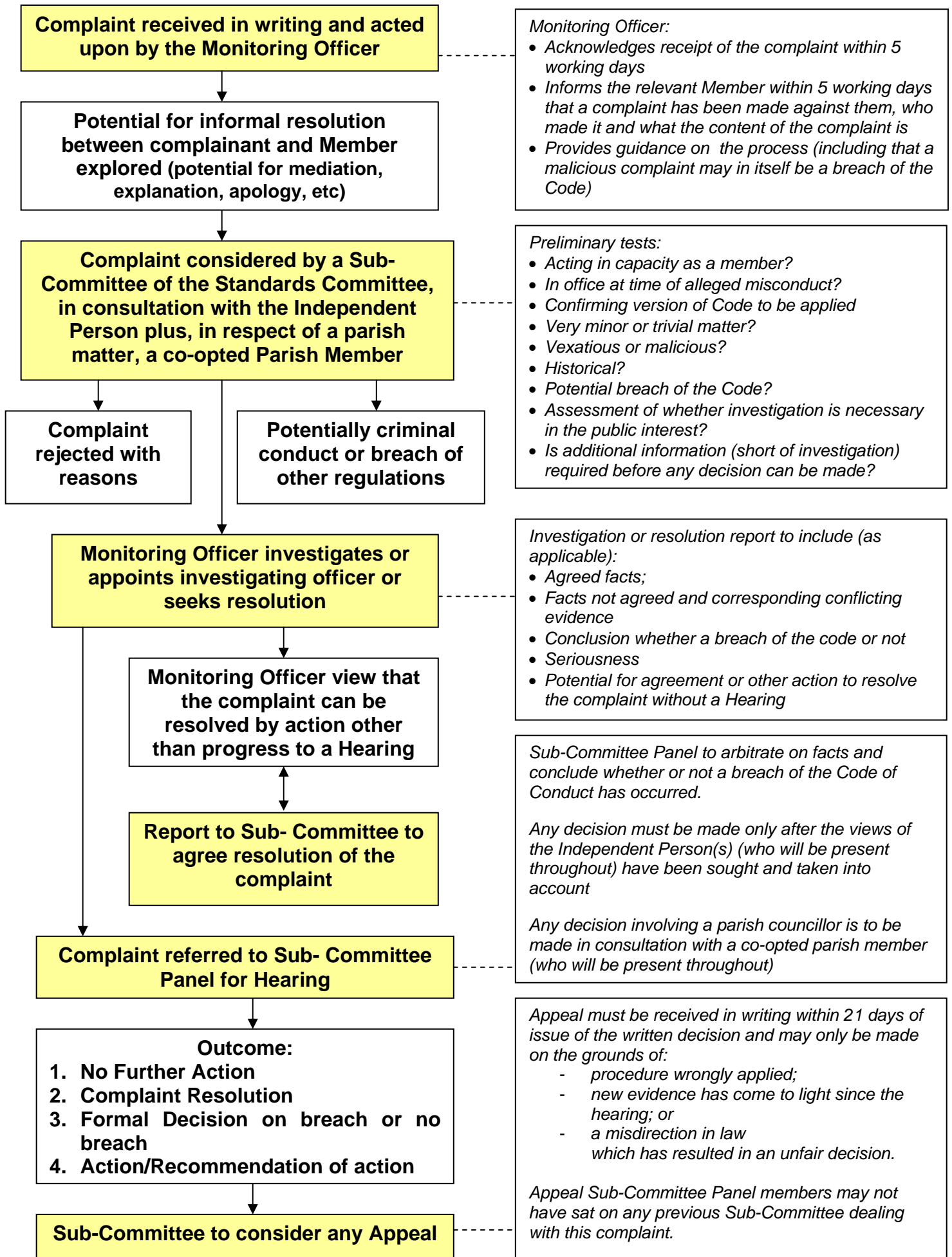
2.5 That the Monitoring Officer should ensure that an update on the number of complaints received and the outcomes of any determinations be received at the next meeting.

3. Background

3.1 The Standards Committee (England) Regulations 2008 provided for a prescriptive regime for the consideration and determination of complaints against Councillors. This was supported by a body of statutory guidance released by Standards for England, the regulatory body.

- 3.2 The new regime is less prescriptive and allows Milton Keynes Council to develop its own process for determining complaints, which has been approved by the Council and is attached at Appendix 1.
- 3.3 In addition to this flowchart, with regard to formal investigations and hearings, it is suggested that it would be prudent to ensure that clear processes are set out for both the investigation and determination of complaints by hearing, to ensure that the subject member and the complainant are clear about their roles and also to ensure that the subject member has the opportunity to input into the process.
- 3.4 These policy documents are currently being developed and will be submitted to the next meeting of the Standards Committee. However, in the interim it is suggested that the documents attached at Appendices 2, 3 and 4 are followed.

Background Papers: None



LOCAL INVESTIGATIONS AND OTHER ACTION

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introduction

This guidance on local investigations and other action is for standards committees and monitoring officers.

It reflects the Standards Committee (England) Regulations 2008 (the regulations). These regulations are mandatory and this guidance must be taken into account by your authority.

The regulations set out the framework for dealing with allegations of misconduct by members, including carrying out investigations and taking steps other than investigation. We will refer to steps other than investigation as 'other action'.

The regulations state that anybody who has had a case referred to them by a standards committee must take the following guidance into account. Also, they must follow the regulations and have effective procedures in place for conducting investigations and hearings, known as determinations.

The guidance applies to monitoring officers and anyone nominated by a monitoring officer to carry out investigations or other action, employed or engaged by:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- passenger transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Any reference in this guidance to a 'standards committee' includes a reference to any sub-committees. These include those established to make an initial assessment of an allegation, to review an initial assessment decision and to hold a determination hearing.

introduction

Any reference in this guidance to 'you' is a reference to a monitoring officer, a deputy monitoring officer or any person nominated by them to carry out their functions.

Furthermore, any reference to the 'subject member' is a reference to the member who is the subject of the allegation.

You can contact the Standards Board for England on **0845 078 8181** or email **enquiries@standardsboard.gov.uk**

conflicts of interest

Interests and natural justice

Standards committees and monitoring officers are at the heart of the standards framework. They promote, educate and support members in following the highest standards of conduct and ensuring that those standards are fully owned locally.

Under the Code of Conduct, members must have regard to the advice of the monitoring officer when it is given as part of the monitoring officer's statutory duties. Monitoring officers will advise their council and its standards committee on the adoption and promotion of high ethical standards including their authority's Code.

Monitoring officers have four main roles in relation to the Code of Conduct:

- They provide advice to the standards committee.
- They advise subject members.
- They deal with cases of alleged misconduct referred to them by standards committees and ethical standards officers. This is a statutory role that can be delegated.
- They advise members about conduct issues.

An investigation could create a potential conflict of interest between these roles. For example, it is likely that a conflict of interest would arise if you were asked to investigate an allegation against a member and you had advised them on the same issue.

In such situations, you should delegate the investigation to somebody else.

Advising standards committees

We have previously recommended that monitoring officers should act as main advisers to standards committees on cases referred by ethical standards officers for local determination. However, they should not do so if they have an interest in the matter that would prevent them from performing the role independently.

It is vital that standards committees have access to appropriate advice on cases that have been referred for local investigation, as well as those referred only for a hearing. Monitoring officers will need to ensure that there is someone able to advise the standards committee throughout the process of investigation.

The Standards Board for England believes that you should not conduct an investigation and advise a standards committee at a hearing about the same case. You therefore need to consider whether it is more important to investigate the matter and delegate the role of advising the standards committee, or to delegate the investigative role.

If you advise the sub-committee dealing with initial assessment, you would not be prevented from advising the sub-committee dealing with review decisions. Advising either sub-committee about a case would not stop you from carrying out an investigation into that case.

4 LOCAL INVESTIGATIONS AND OTHER ACTION

conflicts of interest

Where you have made a complaint to the standards committee, this will normally mean that you should not provide advice to the committee and its sub-committees about the case. However, where you are doing nothing more than making a complaint on behalf of others, you may be able to continue giving advice to those bodies. However, where possible you should seek to avoid making complaints on behalf of others.

Personal conflicts

Take care to avoid any personal conflicts of interest. You must not participate if you find that you have a direct or indirect interest in an investigation. For example, you must not participate if you have a direct financial interest, or a family member or friend is involved. Instead, you should notify the standards committee, the member concerned and the complainant, explaining:

- that you will not take part in the investigation
- the nature of your interest
- who will carry out the investigation in your place

conducting investigations

Referral of allegations

The Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, provides that standards committees can refer complaints that a member has breached the Code of Conduct to a monitoring officer for investigation or other action.

Ethical standards officers appointed by the Standards Board for England may also refer complaints to you, but this is most likely to be a direction for other action.

When referring a complaint, the standards committee or the ethical standards officer will forward details of the complaint to you, along with any other information that they consider appropriate.

Disclosure of information

The information that a monitoring officer obtains during the course of a local investigation is covered by Section 63 of the act. You must treat this information as confidential until the investigation is completed. You may only disclose it for the purposes set out in Section 63(1) as amended by Regulation 12 of the regulations. These purposes include carrying out your functions under the act and the regulations. Please see the section **Confidentiality** on **page 10** for further information.

When a matter is referred to you by your standards committee or an ethical standards officer for investigation or other action, you must inform:

- the subject member
- the complainant
- the standards committee of any other authority concerned
- the relevant town or parish council if the subject member is a town or parish member

We would suggest that the notice sent to the town or parish council is sent to the parish clerk, unless sending it to the chairman of the council is more appropriate because of the parish clerk's involvement in the complaint.

This requirement to notify is subject to any direction given by an ethical standards officer or the standards committee.

You should also explain to them what will happen next.

Conducting your investigation or other action

You must always be aware of your obligations under the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation or other action.

When conducting an investigation you have the power to make inquiries of any person you think necessary. However, there is no obligation for them to respond. If you have difficulties obtaining a response, your standards committee may consider referring the matter to the Standards Board for England to investigate, as ethical standards officers have the power to compel a witness to provide information.

conducting investigations

During an investigation you can require your authority and any other authority concerned to provide you with any advice or assistance you need to help you with your investigation. All authorities other than parish councils must do this at their own cost. Parish councils can require the district or unitary council responsible to cover any reasonable costs incurred by the parish council in providing advice and assistance with the investigation.

We provide information on conducting investigations and taking other action in our guide **How to conduct an investigation**. This is not statutory guidance, but practical information that you may find helpful.

Evidence of new breaches

During the course of an investigation, you may uncover evidence of conduct by members that breaches the Code of Conduct, but extends beyond the scope of the investigation referred to you.

Your powers as an investigator relate only to the allegation that you have been given. You may uncover evidence of a possible breach that does not directly relate to the allegation you are investigating. If this happens, you should tell the person you obtained the information from that you cannot investigate the possible breach as part of your existing investigation. You should also tell them that they may wish to make a separate complaint to the relevant standards committee.

Alternatively, you may wish to refer the matters to the standards committee yourself as a new complaint for them to make an initial assessment on. There might also be cases where you refer the original case back to the standards committee. Please see the section **Referring cases back to standards committees** on **page 8** for further information.

Referring cases back to ethical standards officers

During the course of an investigation referred to you by an ethical standards officer, circumstances may arise that prompt you to ask them to take the case back from you. These circumstances could include:

■ Evidence of further breaches

You may uncover evidence of a further possible breach that relates directly to the investigation, revealing for instance, a consistent pattern of behaviour.

■ Obstruction of an investigation

The ethical standards officer is likely to accept a case back only if they believe you have genuinely been prevented from completing the investigation. An example of this is where a subject member refuses to cooperate with your investigation.

Cases where an officer obstructs an investigation are not a matter for the

conducting investigations

Standards Board for England. It may, however, be a disciplinary matter for your authority to consider under the terms of the officer's contract of employment.

When you request an investigation to be referred to an ethical standards officer, you must state in writing to them the reasons why you believe they should carry out the investigation. All requests must be made prior to the completion of your investigation.

You can ask an ethical standards officer to take a case only once during the course of an investigation. It is therefore important to make sure you are satisfied that this is the correct course of action to take.

The ethical standards officer will respond to your request within 21 days. They will either direct you to continue with your investigation or accept the matter as requested.

Referring cases back to standards committees

During the course of an investigation, circumstances may arise that prompt you to ask the standards committee to take the original case back from you. You can only do this during an investigation in either of the following situations:

- You believe that evidence is uncovered suggesting a case is more or less serious than may have seemed apparent to the standards committee originally. Furthermore, if the standards committee had been aware of that evidence, it would have made a

different decision about how the case would be dealt with.

- The subject member has died, is seriously ill or has resigned from the authority and you are of the opinion that it is no longer appropriate to continue with the investigation.

In this context 'seriously ill' means that the member has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. You would be expected to establish this from a reliable independent and authoritative source other than the subject member. Stress brought on by the investigation is not likely to fall into this category.

When you request that an investigation be referred back to the standards committee, you should explain in writing the reasons why you believe it should be referred back to that committee.

All requests must be made before you complete your investigation. Please see the section **Completion of an investigation** on **page 11** for further information.

You should notify the subject member and the complainant of a decision to refer the allegation back to the standards committee, and provide time scales within which the matter will be dealt with.

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The committee must deal with your referral as it would deal with an initial complaint. If the standards committee decides to refer the allegation back to you, it can limit the circumstances in which the case can be referred back to it again. The standards committee can decide that the case may only be referred back to it again in the circumstances set out in the second bullet point above.

You should note that it is not possible to refer a case back to your standards committee if you were instructed to take other action rather than carry out an investigation. This is because Regulation 16, which allows a referral back, only applies to cases referred for investigation.

Deferring an investigation

An investigation should be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the member's conduct.
- You cannot proceed with your investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding.
- Your investigation might prejudice another investigation or court proceeding.

An investigation may also need to be deferred:

- when there is an ongoing investigation by another regulatory body
- because of the serious illness of a key party
- due to the genuine unavailability of a key party

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, you should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.

If at any time during the investigation you become aware of any circumstances that might require the investigation to be deferred, you should notify the subject member of this. If you are not the monitoring officer you should notify the monitoring officer and seek their consent to the deferral.

The decision to defer an investigation should be taken by you, the monitoring officer. If you have asked someone else to carry out the investigation, they will need to gather sufficient information from the complainant, subject member, and from the police or other organisation involved, to enable you, as the monitoring officer, to come to a decision. You may wish to seek legal advice at this stage. The reason for the decision to defer should be specifically set out in the investigation file with supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another

conducting investigations

investigation or court proceedings. The investigator should highlight those areas where investigation may be possible in the investigation plan.

In some cases, it will be possible to investigate the alleged conduct in parallel with another investigation, for example where the Local Government Ombudsman is investigating a council's decisions and you are investigating the conduct of an individual member involved in making the decision. You may need to work closely with the other organisation, and agree the steps that each party will take.

You might also consider asking the standards committee to refer the investigation to the Standards Board for England in these cases, to allow closer cooperation between the two investigators.

When a decision is taken to defer an investigation, you should inform:

- the subject member
- the complainant
- the standards committee of any authority concerned
- the relevant town or parish council if the subject member is a town or parish member

You should ask the police, other relevant organisation or individual in writing to keep you informed of the outcome of any police or other investigation, court proceedings or other relevant matter. You should note any important dates, for example of committal hearings, in the investigation plan review. In addition, you may wish to make further

contact with the police, other body or individual to ask for an update on the matter.

A deferred investigation should be kept under regular review, in the interests of natural justice. You may wish to seek legal advice at regular intervals, for example every three months, from the date of the deferral decision about the reasonableness of continued deferral.

Once a decision is taken to begin the investigation again you should notify in writing:

- the subject member
- the complainant
- the standards committee of any authority concerned
- the relevant town or parish council if the subject member is a town or parish member

You should also review the investigation plan in light of the outcome of any police investigation or court proceedings.

Confidentiality

You must treat the information that you gather during your investigation as confidential. This will help ensure that your investigation is seen as fair. Maintaining confidentiality reduces the risk of evidence being viewed as biased, and preserves the integrity of the investigation.

Note: the fact that an investigation is being conducted does not need to remain confidential.

conducting investigations

We recommend that you also ask the people you interview, and anyone else aware of the investigation, to maintain confidentiality. You should remind members of their obligations under paragraph 4(a) of the Code of Conduct regarding the disclosure of information that they receive in confidence. In addition, members should be reminded of the requirements of Section 63 of the act.

You must not disclose information obtained in an investigation unless:

- the disclosure will enable the standards committee, an ethical standards officer, the Local Government Ombudsman, the Audit Commission and Welsh equivalent, the Electoral Commission or the First-tier Tribunal to perform their statutory functions
- the disclosure will assist the monitoring officer to perform their statutory functions
- you have permission to disclose it from the person the information relates to
- the information has already lawfully been made public
- the disclosure is made for the purposes of criminal proceedings in the UK
- you are required to do so by a court or similar body

Any draft report that you issue on the outcome of the investigation should be

marked as confidential. This is to preserve the integrity of any further investigation that you may need to undertake.

Information about confidentiality of documents in relation to standards committee hearings is included in our guidance, **Standards Committee Determinations**.

Timescales for an investigation

There are many factors that can affect the time it takes to complete an investigation. Nevertheless, it is important that there are realistic targets for the completion of an investigation. This allows standards committees to monitor the progress of investigations and explore reasons for any delays. The Standards Board would recommend that most investigations are carried out, and a report on the investigation completed, within six months of the original complaint being assessed by the initial assessment sub-committee.

Completion of an investigation

It is important to know when an investigation has been completed. Once an investigation is completed, a case cannot be referred back to an ethical standards officer or the standards committee. Furthermore, the timescale for holding a hearing to consider the outcome of a local investigation is normally three months from the completion of that investigation.

On completion of an investigation, the monitoring officer must make one of the

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findings required by Regulation 14(8) of the regulations, and write a report. Once a final report has been written and dated by the monitoring officer, the investigation should be regarded as completed. Where the report is being written by another person, the position will depend on the functions that were delegated to that person by the monitoring officer. In general, the investigation should be regarded as completed when the monitoring officer receives the final report and accepts that no further investigation is necessary.

reports

Purpose of the report

The report should be treated as an explanation of all the essential elements of the case and a justification for any possible sanction, if one is suggested. Normally sanctions are a matter for the standards committee, so an investigation report should not normally suggest a sanction.

Producing a draft report

When you have concluded your investigation, you should consider whether to produce a draft report before your final report. Where you can, you will need to form conclusions about the evidence on the balance of probabilities. A draft report is issued to the parties in the investigation for review and comment. It gives you the opportunity to check facts and ensure that all aspects of the case have been explored in sufficient detail.

When deciding whether to produce a draft report, ask yourself:

- Are the facts in the matter complex or ambiguous?
- Are the facts of the case disputed?
- Do the parties expect to receive a draft for comment?

Issuing draft reports

If you decide to issue a draft report, copies should be sent for comment to the complainant and to the subject member. The draft should not be sent to other witnesses or parties interviewed, but you should seek confirmation of their evidence from them before issuing the report. You might do this by sending them extracts from your report that refer to them or their evidence.

At this stage, the subject member or complainant may comment on the draft report. You may decide to redraft your report based on the comments received. If you make significant changes to your first draft following the comments received you may consider issuing a second draft. Occasionally, responses may reveal a need for further investigation. Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.

Final reports

The final report must be sent to:

- the subject member
- the standards committee of your authority
- the standards committee of any other authority of which the subject member is a member, if requested

reports

A copy may also be made available to the complainant and others as part of the hearing process.

The report must make one of the following findings:

- that there has been a failure to comply with the Code of Conduct (a finding of failure)
- that there has not been a failure to comply with the Code (a finding of no failure)

If you consider that there has been no breach of the Code, you should explain in a covering letter to the people listed above that the report will be sent to the standards committee for consideration. You should also state that it is possible the standards committee will reach a different conclusion.

If you consider that there has been a breach of the Code, you should make it clear that there will be a hearing into the allegations.

If the subject member is a town or parish councillor, you should advise the relevant parish/town clerk of the outcome of your investigation.

The report should be accompanied by information explaining the circumstances under which the standards committee may conduct a hearing into the allegations. It should also explain the procedure for these events.

Report checklist

Your report should contain the information listed below.

- a 'confidential' marking
- a 'draft' or 'final' marking
- the date
- the legislation under which the investigation is being carried out
- a summary of the complaint
- the relevant sections of the Code
- evidence
- your findings of fact
- your reasoning
- your finding as to whether there has been a failure to comply with the Code

The level of detail required will vary for each report, depending on the complexity of information to be considered and presented.

In addition, the letter you send with the draft report should explain that the report does not necessarily represent your final finding. The letter should also explain that you will present a final report to the standards committee once you have considered any comments received on the draft report.

Furthermore, the letter you send with the final report should explain that the report represents your final findings and will be presented to the standards committee. It is important that the report has the date of its completion on the front page. This provides clear evidence of when the time within which a hearing should be held begins.

reports

The date of the hearing should be within three months from the date the monitoring officer, or delegated officer, completes the final report.

The report will contain documents that you have relied on in reaching your conclusions. These may include:

- a chronology of events
- records of telephone conversations, letters and notes of interviews with witnesses

When the report is considered by the standards committee, it will normally be as an appendix to a covering report from the monitoring officer, which will be on the agenda of the standards committee. Both reports can be kept confidential under paragraph 7C of Schedule 12A of the Local Government Act 1972, until the committee decides at the hearing whether it wishes to meet in public.

You can find information about confidentiality of documents in relation to standards committee hearings in our guidance, **Standards Committee Determinations**.

Consideration of the final report

If you find that there has been a breach of the Code of Conduct, you must refer the case for determination. Advice on determinations can be found in our **Standards Committee Determinations** guidance.

If you consider that there has not been a breach of the Code, the standards committee must decide at a meeting if it agrees with this. At the meeting, the standards committee should simply consider the report. It should not seek to interview witnesses or take representations from the parties.

The standards committee's role here is to decide, based on the facts in the report, whether it agrees that the Code has not been breached or if there is a case to answer. If the standards committee believes there is a case to answer, there will be a hearing.

If the standards committee agrees that the Code has not been breached, the standards committee must arrange for a notice to be published in a local newspaper. It can also arrange for the notice to be published on the authority's website and in any other publication. The notice should state the standards committee's finding, and give reasons for it. In cases where the standards committee finds that the Code has not been breached, the subject member is entitled to insist that the notice is not published anywhere.

If the standards committee agrees with the monitoring officer's 'finding of no failure' to comply with the Code, it must, as soon as possible after making its decision, give written notice of its finding to:

- the subject member
- the complainant
- any ethical standards officer concerned

reports

- the relevant town or parish council if the subject member is a town or parish member

We would suggest that the notice sent to the town or parish council is sent to the parish clerk, unless sending it to the chairman of the council is more appropriate because of the parish clerk's involvement in the complaint

You will need to consider how any 'finding of no failure' decisions are recorded for the minutes of the standards committee.

Publication of the details of such cases on an authority website where the minutes of authority meetings are routinely stored may well undermine the purpose of a member's right not to have the notice published.

Standards committees may make recommendations to their authorities on matters arising from the report, such as revision of the council's protocols or training on the Code.

delegation of investigations

Under Section 82A of the Local Government Act 2000, monitoring officers can delegate functions, including investigations, to their deputy or to any other named individual.

However, monitoring officers should maintain the function of overseeing the investigation. As with monitoring officers, deputies and nominated people do not have to be legally qualified but are obliged to take account of any guidance issued for monitoring officers by the Standards Board for England.

Under Section 5(1)(b) of the Local Government and Housing Act 1989, local authorities must provide you with sufficient resources to perform your duties. Under Section 82A of the Local Government Act 2000, deputies and other officers have the right to the same support as monitoring officers.

In many authorities, monitoring officers will be able to appoint a member of staff to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities. This is to make sure that an experienced officer is available to carry out an investigation, should the need arise. Authorities may also decide to outsource the investigation to another organisation or individual.

Monitoring officers should record the scope of the delegation in writing and keep this on the investigation file. This is to ensure that there is no confusion concerning the role and authority of the

person delegated to conduct the investigation. You should be particularly clear about who is responsible for writing the draft and final reports. If the monitoring officer intends to advise the standards committee at a hearing they should avoid being involved in the preparation of the investigation report. However, they may want to be able to reserve the right to decide when the report is of an acceptable quality to be put to their standards committee.

You should inform the relevant parties when you delegate an investigation, so that they know who is dealing with the case and in case they need to provide the investigator with more information.

other action

When dealing with allegations, a standards committee or ethical standards officer can decide that some form of action other than investigation or determination is needed at a local level. The standards committee must consult its monitoring officer before reaching that decision. An ethical standards officer will also consult the monitoring officer before issuing a direction of this kind.

The standards committee or ethical standards officer may, for instance, direct you to consider what recommendations to make to your authority about wider issues for that authority that are raised by the case. For example, a relatively minor alleged infringement of the Code, by a member who is accused of misusing their authority's IT equipment, might identify shortcomings in the authority's policy about members using that equipment.

The standards committee or ethical standards officer might decide that the best way to deal with the allegation is to direct the monitoring officer to review the policy, and make recommendations for improvement to the authority.

Alternatively, the standards committee or ethical standards officer may try to ensure the parties concerned attempt some form of mediation. Further information on when standards committees may consider other action to be appropriate can be found in our guidance called the **Local assessment of complaints**.

Once a standards committee refers an allegation for other action, an investigation

into that allegation can no longer take place. However, if a standards committee refers an allegation for investigation, the monitoring officer may consider once the investigation has started, that the issues would be more appropriately dealt with through other action. Please see the section **Referring cases back to standards committees** on **page 8** for the conditions that must be satisfied before this can happen.

If the monitoring officer makes a request to the standards committee that the allegation is dealt with through other action rather than investigation, the monitoring officer should inform the subject member and the complainant of this request. They should also give the subject member and the complainant the opportunity to comment before the standards committee makes any decision.

When you have been given a direction to carry out other action, you should report back to the standards committee or ethical standards officer, within three months, on the outcome of your actions or with details of your proposed actions.

If the standards committee or ethical standards officer is satisfied with the action specified in the report they must notify:

- the subject member
- the complainant
- the standards committee of any authority concerned
- the relevant town or parish council if the subject member is a town or parish member

other action

If the standards committee is not satisfied with the action specified in the report they can give you further directions about how to deal with the case. This cannot include a direction to carry out an investigation.

If an ethical standards officer is not satisfied with the action specified in the report they can require you to arrange for the publication of a statement in a local newspaper. The statement should give details of the other action directed by the ethical standards officer, the reasons why the ethical standards officer is dissatisfied with the action taken, and your response.

notes

HOW TO CONDUCT AN INVESTIGATION

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introduction

This is a guide for monitoring officers carrying out investigations and other action relating to allegations referred to them by standards committees or ethical standards officers.

This guide provides an introduction to the practice of investigation and is designed to assist anyone delegated to investigate allegations of misconduct. You should be aware that the process can be a frightening and stressful experience for the subject member, witnesses and complainant.

What follows is an outline of the principles by which the Standards Board for England conducts its investigations. It does not aim to be prescriptive and is not statutory in nature, but it is worth bearing in mind that the processes outlined below have been tested at the First-tier Tribunal (Local Government Standards in England). Many are also based on specific recommendations by the First-tier Tribunal tribunals

We hope this guidance will assist you in ensuring that:

- you establish what happened in a fair and objective manner
- you set out clearly the reasoning for the finding reached
- you complete the investigation promptly and proportionately

You can contact the Standards Board for England on **0845 078 8181** or email **enquiries@standardsboard.gov.uk**

planning the investigation

You will need to keep a written record to demonstrate what was considered at the start of each investigation. This document is most likely to take the form of an investigation plan. Please see **Appendix 1** of the **Local investigations toolkit** for an **Investigation plan** template. The following areas should be covered in the plan:

- The complaint made against the subject member. You may find it necessary to seek clarification from the complainant.
- The paragraphs of the Code of Conduct that may have been breached. Please note that you do not need to accept the complainant's interpretation of what paragraphs may have been breached. It is helpful to breakdown each potential failure to comply into the component parts of each provision. For example, in considering paragraph 6(a) you will need evidence to demonstrate that:
 - the member used their position
 - the member used their position improperly
 - the member conferred or attempted to confer an advantage or disadvantage
- The facts which need to be determined to establish if the member breached the Code and to decide what the appropriate finding might be. They need to include:
 - facts which would establish if the conduct happened as alleged
 - facts that would need to be proven to show that the conduct constituted a breach of the Code
 - facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology
- The evidence that you would need to determine the issues outlined in your plan. This includes who you will need to interview and why.
- The evidence that has been supplied by the complainant or, in the case of an investigation plan review, the evidence that you have gathered.
- How you plan to gather the evidence that you need.
- How long you think it is likely to take you.

If at any stage in the investigative process there are significant changes to any of the above areas, an investigation plan review may need to be completed. Please see **Appendix 2** of the toolkit for an **Investigation plan review** template.

At the start of the investigation you should contact the complainant and subject member to advise them of your contact details and provide them with a preliminary timescale for the investigation. Please see **Appendix 3** of the toolkit for a **Contact parties letter** template.

planning the investigation

At the end of your investigation you should have documents which chart the approach you took to the investigation, the reasons for this approach, and when you changed your approach. You do not need to share these documents with the parties involved in the investigation – they are for you to use as you wish. Their main function is as a planning tool, but they also provide an audit trail should your investigation be the subject of a complaint or review.

documentary evidence

Documentary evidence should be sought before you conduct any interviews and at the earliest opportunity.

When drafting the investigation plan it is helpful to make a list of the documents you need and who they will be obtained from. This list can then form the basis of the first contact you make with the parties and other witnesses.

It is a good idea to invite the subject member to provide an initial response to the allegation in writing when first making written contact with them. This gives members the opportunity to admit to the breach if they would like to do so, and could then save time and effort for all involved. A written response may also provide you with additional useful information before the interview stage. Please see **Appendix 3** of the toolkit for a **Contact parties letter** template.

How to compile documentary evidence

- Requests for information should be made in writing, even if the initial contact was made by phone.
- Explain the legal authority you have for asking for the documents.
- Explain the broad purpose for which you need the document, for example “an investigation into the conduct of Councillor X”. You do not need to provide the detail of the complaint against the member at this stage.

- Outline the confidentiality requirements that relate to the information request.
- Set a deadline for response.
- Provide a contact name and number for further enquiries.

What if...

The evidence is held on a computer?

- It is good practice to identify the person using the computer in investigations that rely on computer generated documents.
- It may be appropriate to search the hard drive for deleted or corrupted documents. A specialist firm may be employed to facilitate this.

The information is highly sensitive?

- In certain cases, you may wish for a subject member or other party not to be made aware of a request for evidence. For example, if you consider that this might lead to destruction of evidence by one of the parties or to the improper collaboration of witnesses. In such circumstances it may be appropriate to arrange to meet with the witness, having given them a brief outline of your role. You can then make your request for the relevant documents during the meeting. It is important here that you explain what powers you have to obtain information. If in doubt, it may be prudent to seek legal advice on how to proceed.

documentary evidence

The request for information is refused?

- Remind the party of any legal obligation they have to provide information, for example, Regulation 14(4)(b) of the Standards Committee (England) Regulations 2008.
- While there may be a legal obligation on an individual or organisation to provide documents, enforcing such obligations is likely to involve time consuming and costly legal proceedings. It may be easier to see if there is another route to obtaining the same information.

interviews

Your goal in interviewing is to obtain the most informed, reliable evidence possible. It is not to ambush or catch out interviewees. The following guidance on interviewing will assist you in achieving this.

Order of interviews

You will normally interview the subject member at the end of the investigation, when you have gathered all your evidence. This will give you the opportunity to put that evidence to the subject member and obtain their responses to it. However, it could save time if you find out at the outset that the subject member admits part or all of the allegations. You could ask for an initial response to the allegations to establish this. Please see **Appendix 3** of the toolkit for a **Contact parties letter** template. This response could be provided orally or in writing.

You may decide to carry out consecutive interviews on the same day if you are concerned that witnesses may collude or use information provided to them.

If you have already interviewed the subject member and complainant, you may wish to re-interview them near the end of the investigation. This may allow you to get them to agree facts. It also gives the interviewees an opportunity to comment on issues that have been raised during the course of the investigation. It provides an opportunity to present potential inconsistencies to the relevant parties for comment.

The format of the interview

It might be more appropriate to conduct face-to-face interviews than telephone interviews if:

- the matters involved are sensitive
- the interviewee is vulnerable
- you will need to refer to multiple documents during the interview
- the interviewee wishes to have a legal representative present
- the interview is with the subject member

It may be more appropriate to conduct a telephone interview if:

- there are significant resource implications, either in terms of cost or time in conducting a face-to-face interview
- the interview does not fall into one of the categories outlined above

If a subject member or witness insists on a face-to-face interview then serious consideration should be given to their request. You should specifically check that there is no medical or disability-related reason for their request. If there is, then you should conduct a face-to-face interview. If there is no medical or disability-related reason, then the decision is at your discretion. If you still wish to proceed with a telephone interview despite their request, then you should outline your decision in writing on the file. This is to show that it was both proportionate and reasonable.

interviews

Do not conduct joint interviews. It is important that each witness gives their own account without having their recollection influenced by hearing another person's account.

An interviewee may have a friend or adviser present. That person should not be someone who is a witness and they should be asked to keep the matters confidential.

If an interviewee is a vulnerable person or a minor, you may wish to ensure that you are accompanied by another person.

The venue

If you are conducting a face-to-face interview try to ensure that the venue is:

- mutually convenient
- on neutral territory
- in a private room where you cannot be overheard
- a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or subject member
- safe for you, the investigating officer

Occasionally it may be appropriate to conduct an interview at the home of the interviewee. This should generally be at the request of the interviewee.

Information you must provide interviewees

You should provide the following information in writing to the interviewee:

- Confirmation of the agreed time, date and venue or that it is a telephone interview.
- Confirmation that the interview will be recorded, if appropriate.
- Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation. They should also not be a member of the standards committee or a council officer. Ask that they provide you with the name and status of their representative before the interview.
- The legal framework within which you are conducting the interview.
- How the information they give you in the interview may be used.
- The circumstances in which the information that they give you during the interview may be made public.
- The confidentiality requirements that they are under as an interviewee.
- Details and copies of any documents you may refer to during the interview.
- In the case of the subject member, details and copies of any evidence you have gathered and which you may refer to in your report. You do not have to disclose witness testimony prior to the interview, depending on the nature of that testimony and whether you

interviews

want the interviewee's account prior to putting the witness's testimony to them. However, you may wish to disclose a witness's testimony during an interview once you have obtained the interviewee's own account. You could also consider providing an outline of the areas you intend to cover at interview.

- Your contact details if they have any questions or concerns before the interview.

Please see **Appendix 4** of the toolkit for a **Pre-interview letter** template.

Note: if you only need to confirm one or two factual details with a council officer you may contact them by phone and do not need to forewarn them. However, when obtaining this information you should:

- orally outline all of the information you would otherwise have provided in writing as set out above
- check that they are happy to give it to you then, rather than at an agreed date in the future
- confirm the detail of information they do provide, in writing

Special circumstances

If an interviewee is disabled you should make reasonable provisions to cater for their specific needs. If an interviewee is vulnerable or a minor, then they should

always be accompanied by a third party at the interview.

Structuring an interview

Interviews should be planned in advance. You can plan your questions using the following suggested format:

- Divide the information you require into discreet issues. For example, Issue 1: The planning meeting on date x; Issue 2: The planning meeting on date y.
- Make a note of the evidence you have already obtained about each issue.
- Note how you would briefly summarise the evidence to the interviewee.

Please see **Appendix 5** of the toolkit for an **Interview plan** template

Conducting the interview

All important interviews should be audio recorded where possible. The only exception is when the interview is likely to cover only a small number of factual matters. In this case, it may be more appropriate to resolve these factual matters in writing.

Before recording an interview you should:

- obtain the consent of the interviewee before you start recording the interview
- ask them to record their consent on the record once you have started the recording

interviews

- offer to send the interviewee a copy of the transcript or draft interview statement, whichever is applicable. If they ask, you can send them a copy of the recording too.

If you are concerned that the interviewee may share the transcript with other witnesses, you can delay sending the transcript or recording until you have completed all of your interviews.

The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering. Standards Board investigators tend to use digital voice recorders to record face-to-face interviews.

At the start of the interview

- 1) When the interviewee arrives, try and put them at ease.
- 2) Before you start the formal interview, inform the interviewee that there is a standard interview preamble that you must take them through. This ensures that any rapport you have established is unlikely to be lost when you take them through the legal framework of the interview.
- 3) Confirm that the interview will be recorded and put the recording device in a visible place on the desk.
- 4) With their permission start recording.
- 5) Ask them to confirm for the record that they consent to the recording.
- 6) Confirm for the record who you are, and the powers under which you are conducting the interview.
- 7) State the date and time for the record.
- 8) Confirm that they received your letter outlining the arrangements for the interview.
- 9) Confirm that they read and understood your letter and ask if they have any questions about any of the information within it.
- 10) If the interview is with the subject member, repeat orally all of the information contained in your letter.
- 11) If the interviewee is at all unclear about anything, then repeat orally all of the information contained in your letter.
- 12) Explain that they can take a break whenever they choose.
- 13) Explain that you will offer them a break if the interview goes over an hour, even if they have not said that they want one.
- 14) Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end.
- 15) Explain that they can ask you to rephrase a question if they don't understand it.

interviews

Please see **Appendix 6** of the toolkit for a suggested **Interview preamble**.

During the interview

- 1) Start the interview with the subject member with some background questions. These could include 'how long have you been a member', or 'what training have you had on the Code of Conduct?'
- 2) Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question.
- 3) Do not dart back and forth between different issues as you are liable to confuse yourself and the interviewee.
- 4) Tackle one subject issue at a time.
- 5) Ask open questions about information the interviewee or other witnesses have provided about the issue.
- 6) Drill down. In other words, ask open questions about one specific issue until you have all the information you need on it.
- 7) Where relevant ask the interviewee to reconcile differing accounts.
- 8) Ask closed questions to confirm the information you have obtained about the specific issue.
- 9) Move onto the next issue using the same method. Start with a broad open question about the subject, drill down for information with specific open questions. Conclude the area by asking closed questions to confirm what you have been told.
- 10) If you are interviewing with someone else, the first interviewer should ask the open questions about each subject area. The second interviewer should then pick up on points to be clarified at the end of each subject area and ask closed questions to confirm what was said.
- 11) Do not ask leading questions, for example, 'You said this to the clerk, didn't you?'
- 12) Do not ask the interviewee to speculate.
- 13) Accurately put the evidence of other interviewees to the interviewee and ask for their response.
- 14) When asked, explain the relevance of your question.
- 15) Do not allow the interviewee's lawyer or representative to answer a question.
- 16) You must allow the interviewee to stop and obtain advice whenever they choose.
- 17) If the interviewee becomes upset or unwell you must offer them a break.
- 18) Never raise your voice.

interviews

- 19) Only interrupt if the interviewee is being unreasonable or is not providing relevant information.
 - 20) You should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then you should move on to another point or issue.
 - 21) Do not question the subject member about matters which fall outside the scope of the original allegation.
 - 22) If the interviewee wants a break, record the time of the break on the record and the time you resume the interview. Ask the interviewee to confirm for the record that you did not discuss anything about the case with them during the break.
- 3) If the content of the transcript is disputed, check the discrepancies against the recording.
 - 4) If the transcript is confirmed by the recording, write to the interviewee to inform them of this. In these circumstances, when the matter is referred to the standards committee, submit the transcript, the recording, the interviewee's letter outlining the dispute, and your response.

Please see **Appendix 7** of the toolkit for an **Interview statement/transcript letter** template.

Evaluating the information

- 1) Review your investigation plan in light of the information gathered during the interview.
- 2) Review all the evidence you gather to determine if there are any gaps in it.
- 3) Take a view on all disputed relevant matters. Your own opinion on the evidence is sufficient. However, if you are unable to come to a decision, you may need to seek further information or decide that you are unable to reach a conclusion.
- 4) Weigh up all the evidence and decide if the alleged conduct occurred.
- 5) If you decide that the subject member acted as alleged, you will need to consider whether their conduct involved a failure to comply with the Code of Conduct.

Closing the interview

- 1) State the time the interview finished.
- 2) Thank the interviewee for their time and outline what will happen next.

After the interview

- 1) Send the interviewee a copy of the transcript.
- 2) State in the letter that if you do not hear from them by a specified date, you will assume the transcript is agreed.

interviews

- 6) If you decide the member breached the Code, consider whether you have evidence of any mitigating or aggravating circumstances. If not, you may need to seek further information.

reports

Drafting the report

When you have concluded your investigation, you will need to write up your findings in a report to the standards committee. The report should contain the following information:

Title page

You must state:

- who the report is for
- who the report is by
- the date of the report

Executive summary

You must state:

- the full allegation and who it was made by
- the provisions of the Code of Conduct that were considered
- a conclusion as to whether there has been a failure to comply with the Code
- the finding

Member X's official details

You must state:

- when the member was elected
- the member's term of office

- any other relevant authorities they are a member of
- details of any committees on which the member serves or has served
- the date a member ceased to be a member, where relevant
- the date the member signed an undertaking to abide by the Code
- full details of any training the member has received on the Code

Relevant legislation and protocols

You must state:

- any relevant extracts from the Code
- any relevant extracts from any other legislation or protocols considered in the report

Evidence gathered and the investigator's consideration of it

When gathering and considering evidence you may wish to follow this procedure:

- 1) Start by summarising who you have obtained information from.
- 2) Outline chronologically the facts that you have established.
- 3) Set out undisputed facts as facts. Do not summarise them or preface them 'he said' or 'the minutes state'. If they are undisputed just state them as fact.

reports

4) Where there is a disputed fact, outline the different views and your conclusion on them. You need to form a conclusion based on the balance of probabilities. Also state why you have reached this conclusion. For example:

- The clerk, Councillor Jones and Councillor Smith met at Councillor Jones's house on y date at x time.
- At interview the clerk stated that Councillor Jones said...
- At interview Councillor Smith stated that Councillor Jones told the clerk...
- At interview Councillor Jones stated that he told the clerk...
- I have considered the following issues when deciding what Councillor Jones said to the clerk... I consider that on the balance of probabilities Councillor Jones told the clerk...because...

5) Include all the relevant evidence you have gathered even if it does not support the conclusions you have reached.

6) Include any mitigating or aggravating factors, such as the state of mind of those involved.

7) When you refer in the report to material in the evidence bundle, identify the document referred to.

Summary of the material facts

- Summarise the facts needed to confirm the conclusions you have reached.
- Where there was a disputed fact, you will only need to include the conclusion you came to.

The subject member's additional submissions

- Outline information or opinions submitted by the subject member, which you did not consider relevant to the case.
- Outline why you do not deem information or opinions submitted by the subject member to be relevant.

Reasoning as to whether there has been a failure to comply with the Code of Conduct

- Take each alleged breach in turn.
- Outline which part of the Code of Conduct you are considering. Explain the test you are applying when determining if there has been a failure to comply with the Code.
- Explain in detail, giving reasons, why you do or do not consider that the conduct constitutes a breach of the Code.
- Do not introduce any new facts or opinions. You must only refer to evidence or opinions that have been outlined earlier in the report.

reports

- Make sure your explanation of the test you are applying, and the reasons for your conclusions, are detailed and clear enough to understand for a lay person with no legal background.

Finding

You will need to make a finding about each alleged breach of the Code.

- Outline in detail the reason for your decision.
- Refer to aggravating or mitigating facts, which must be outlined in the facts section earlier in the report.

Schedule

- List the exhibits with the title **Schedule of evidence taken into account**. Please see **Appendix 9** of the toolkit for a **Schedule of evidence** template.
- Exhibit all the evidence upon which you have relied when reaching your conclusion.
- In complex cases it may be appropriate to provide a chronology.
- Provide a list of unused material.

Chronology

Where a case is complex it may be helpful to provide a chronology of important events in the case.

Issuing a draft report

Please see **Appendix 8** of the toolkit for a **Report** template

Who should I send the draft to?

- You should issue a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. This is helpful if the report is complex or your conclusions are likely to be disputed by either party.
- The draft should not be sent to other witnesses or parties interviewed, but you should seek confirmation of their evidence from them before issuing the report.

How should it look?

- Ensure that the draft report is clearly marked as 'Draft'.
- You must state that the report may be subject to change and does not represent your final conclusion.
- If you have found the subject member in breach, you should send them copies of the evidence that you have relied upon when reaching this conclusion.
- You must consider whether any of the information in the draft report, or evidence bundle, is confidential information that should not go into the public domain. For example, medical

reports

details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.

- Send an accompanying letter stating:
 - that the report is confidential
 - that it can be discussed with a legal representative
 - the date by which comments must be received

Please see **Appendix 10** of the toolkit for a **Draft report cover letter** template

- It is important to keep a copy of the draft and the bundle of evidence that you send to the subject member. This acts as a record of what information the member has received and prevents duplication of work when issuing the final bundle.

Comments on the draft

- Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. Occasionally, responses may reveal a need for further investigation and may result in changes to the report. These changes may be significant enough for you to consider issuing a second draft. Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.

- Where comments on the draft are critical of the investigation or the investigator, you may need to consider how to respond to the complaints made. You should not let such criticisms prevent a draft report being finalised unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. The only exemption to this is in the circumstances listed in the section **Complaints about an investigation** on **page 25**.

- A party may disagree with:
 - the interpretation of the Code or other legislation
 - the analysis of the evidence
 - the analysis of an individual's conduct
 - conclusions reached in an investigation
 - the scope of the investigation
 - how and who evidence was obtained from

These complaints will normally focus on the draft or final report. They will not usually criticise the actions of a specific individual. However, they may criticise an individual for reaching certain conclusions.

You should avoid getting drawn into lengthy correspondence with the subject member or other interested parties in this situation.

reports

Comments received before the draft is issued

- If the comments are made by the subject member, then you should respond in writing.
- If the subject member does not understand either the Code or the investigative process, then you should seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing. However, you only need to show that you took all reasonable steps to address the subject member's confusion.
- If comments are made by the complainant or a third party, you can either respond to their comments or ask them to wait until they have read the draft report.

Comments received in response to the draft report

- You should keep a written record of your consideration of any comments received on the draft.
- It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report.
- Add to the bundle of evidence any critical comments received on the draft.

Comments received after the final report has been issued

Write to the party explaining that the investigation is now closed and refer them to the person who is dealing with the standards committee hearing. Refer the party to the First-tier Tribunal if the matter has been referred to it.

Comments received after the hearing

- Respond saying that the matter is now closed and no further correspondence will be entered into on the specifics of that case.
- Complaints about the conduct of investigators should be dealt with in the same way as other service complaints. Please see the section **Complaints about an investigation** on **page 25**.

The final report

Who should I send the final report to?

You must send it to:

- the standards committee
- the subject member
- the standards committee of any other authority, other than a parish council, of which the subject member is a member, if requested

reports

A copy may also be made available to the complainant and others as part of the hearing process.

How should it look?

- You must state that the report represents your final finding and will be presented to the standards committee.
- If you have found the subject member in breach you should send them copies of the evidence you have relied upon when reaching this conclusion.
- You must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain. For example, medical details, personal contact details or signatures. All information of this nature should be edited from the final report unless it is essential to the reasoning.
- Send an accompanying letter stating:
 - that some aspects of the report are confidential
 - that you have considered the comments they made in response to the draft report and have amended the final report where appropriate
 - that it can be discussed with a legal representative

Please see **Appendix 11** of the toolkit for a **Final**

producing & referencing the bundle of evidence

You should make two bundles. One of evidence used, which you will submit in full to the standards committee or the First-tier Tribunal (if applicable). The other should be a schedule of unused evidence. You may be required to submit documents from this bundle if they are requested by the standards committee or the subject member.

Contents of the evidence bundle

The evidence bundle will typically include:

a) Documents which establish the legal framework for the investigation such as:

- the complaint letter
- the authority's Code of Conduct
- a copy of any legislation referred to in the report
- a copy of the subject member's declaration of acceptance of office

b) Any document upon which you have relied when reaching your decision, such as:

- transcripts, interview records or interview statements with all relevant parties and interviewees
- written correspondence from the subject member on substantive matters, including comments they made on the draft report

- minutes, reports and other documentary evidence upon which you have relied when reaching your conclusion as to the facts

c) Any document which would assist in the subject member's defence, such as:

- any document that the subject member may seek to rely on in their defence of the conclusions reached

- documents which contain information that is inconsistent with the facts as established by the investigation

- documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses

- documents containing information which could lead to a finding that the standards committee or investigator has acted in breach of the subject member's rights under the Human Rights Act 1998

- documents which provide an explanation or partial explanation of the subject member's actions

d) Background documents. These are documents which you did not rely upon when reaching your decision, but which may be helpful to the standards

producing & referencing the bundle of evidence

committee when considering the case. They should also include documents that the subject member thinks are relevant but which are not, in your opinion, material to the case.

- e) A list of unused evidence. This is a list of the documents that you believe are irrelevant to the investigation.
- f) You should provide sufficient detail about each item so that the standards committee or subject member can request it if they wish.
- g) You do not need to prepare a bundle of the unused evidence.

You do **not** need to disclose:

- a) Sensitive information which you have edited or deleted.
- b) Information protected by legal professional privilege and public interest immunity.
- c) Internal documents such as file notes and draft reports. However, these may be requested by the standards committee, so it is important to be sure that these are precise and clear.

Note: Please ensure that you disclose documents that may be relevant to the case or to the subject member's defence. This is because failure to disclose such documents may result in the standards committee reaching an inappropriate decision, and the decision being deemed unsafe upon appeal.

Structure of the evidence bundle

- The bundle should begin with the documents which establish the legal framework for the investigation.
- The remaining evidence should then be grouped thematically, for example policy documents or minutes.
- Arrange the documents chronologically within their group.
- The front page of the bundle should be numbered 000001, with each subsequent page numbered in ascending order.
- If a document is missing, you should provide a note to this effect to the standards committee outlining the reasons why the document is unavailable.
- Only include multiple versions of a document if it is important to do so for the evidence.

producing & referencing the bundle of evidence

Editing the evidence bundle

The information that should be deleted from the bundle will depend on the circumstances of the case. Information should be deleted on the basis that it may end up in the public domain. You should consider whether to remove the following:

- a telephone number, address, email address, or signature of any person other than on a transcript or witness statement. This is personal data as defined by the Data Protection Act 1998. While the standards committee may need witness contact details, these should still be deleted from any documents and provided as a separate list to the standards committee
- age and date of birth of a party (unless directly relevant to the case)
- any information which relates to matters which were not referred for investigation
- other personal data as defined by the Data Protection Act 1998

Items such as petitions, legal advice and the evidence of vulnerable people need to be deleted on a case-by-case basis. If in doubt seek legal advice.

confidentiality

The legal position

Section 63 of the Local Government Act 2000 as amended, limits the circumstances where information obtained by an ethical standards officer or a monitoring officer during an investigation can be disclosed. Any person who discloses information in breach of Section 63 is guilty of a criminal offence. The legal parameters are as follows.

You should not disclose information obtained in an investigation unless:

- the disclosure will assist ethical standards officers to perform their statutory functions
- the disclosure will assist the monitoring officer or standards committee to perform their statutory functions
- the person who the information relates to gives you permission to disclose it
- the information has already lawfully been made public
- the disclosure is made for the purposes of criminal proceedings in the UK
- you are required to do so by a court or other similar body
- the disclosure is to one of the public bodies listed in Section 63(1) of the Local Government Act 2000 for the purpose of their functions

Any draft report that you issue on the outcome of the investigation should be marked as confidential. This is to preserve the integrity of any further investigation that you may need to undertake.

An ethical standards officer might refer an allegation to you part-way through an investigation into that allegation. If this happens, under Section 63 of the act, they are allowed to disclose any information that they have obtained during the investigation to enable you to carry out your duties. However, there may be circumstances in which the ethical standards officer will be unable to disclose information. An example of this is where the Secretary of State has advised them that the disclosure would not be in the public interest.

Confidentiality in practice

In some circumstances, maintaining the confidentiality of an investigation can be difficult. However, it is important that you take all reasonable steps to maintain the confidentiality of your investigation, as failure to do so may compromise the integrity of your investigation.

Here are some practical steps for maintaining confidentiality:

- Mark all of your letters, transcripts and reports as confidential.
- Outline the legal restrictions on the disclosure of information in any letter that you send. However, you must clearly inform members in writing that

confidentiality

they can appoint a solicitor, or other person, to act as their representative. You must also clearly inform them that they can disclose any relevant document to this representative.

- You should state that their representative should not be someone who may be involved in the investigation.
- It is important that you make it clear to all parties that they should make any approach to witnesses in writing. This is to avoid confusion that might arise about the investigative process.
- When arranging interviews ask interviewees to identify the name of any person who is accompanying them to the interview. Also ask them to state what their relationship is to the interviewee. You should explicitly state, in writing, that they should not be accompanied by anyone who may be called as a witness in the investigation.
- If you think it is possible that witnesses may discuss their testimonies with each other, you should not send the transcripts of any interviews until all of the interviews have been concluded. This may mean that you send interview transcripts out with the draft report.
- Where you are interviewing a number of people who have close relationships with one another, it may be prudent to interview them immediately after each other. This reduces any opportunity for collaboration.

What to do if confidentiality is breached

Write to the party reminding them of the confidentiality requirements and, if they are a member, of their duties under the Code of Conduct.

If you have evidence that information was disclosed to a party prior to their interview, you can take this into account when evaluating the reliability of the witness's evidence.

If the disclosure was made by a member you can consider making a formal complaint about their conduct.

If you consider that the disclosure was substantial you may want to take legal advice on whether to refer the matter to the police.

complaints about an investigation

It is important that there is a clear documented procedure for considering complaints about the investigation. The procedure should fall into two discrete stages. First an evaluation of the nature of the complaint, and second, what action should be taken to handle the complaint.

Evaluating complaints

There are two types of complaints:

- Complaints about the conduct of the investigation (service complaints).
- Complaints about the interpretation and reasoning in the investigator's report.

Service complaints occur when a party criticises the actions of an investigator. Such criticisms may include:

- administrative errors, for example misspelling a name
- failure to communicate
- criticism of the manner in which the investigator behaved
- criticism of the length of time it took to conclude the investigation

The procedure for handling service complaints

You will already have a procedure for processing service complaints generally. You should consider whether to use this procedure when dealing with service complaints about an investigation. The procedure may include the following provisions:

- An agreement that investigators will explain to parties making a complaint that there is an independent service complaints procedure that they can use.
- That the complaint will be acknowledged by someone other than the investigator within an agreed time frame.
- That the complaint should be considered by someone independent of the investigation.
- That a written response will be provided within an agreed time frame.
- An agreed appeals process which should be clearly communicated to the complainant.

Once the complainant has gone through the agreed appeals process, it is reasonable to state that no further communication will be entered into. The complainant is then also free to take the matter up with the Local Government Ombudsman.

complaints about an investigation

The investigation can continue while a service complaint is being addressed. However, there may be circumstances where the complaint is so substantive that it would not be appropriate for the same investigating officer to continue on the case while the service complaint is ongoing. Such circumstances should be very rare.

An investigation into a service complaint should not postpone the conduct of the main investigation.

Handling mixed complaints

It is not uncommon for complainants to mix comments on interpretive matters with service complaints. In such cases, you should write to the complainant outlining which matters will be considered by your service complaints process, and which matters are differences of interpretation which will not be considered as part of the complaint.

other action

It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. In some circumstances it may be more appropriate to deal with matters by taking other action. This decision may be made on receipt of the allegations, or may only become clear after some investigation has been conducted. In such cases, you must refer the case back to the standards committee.

It is important to be aware that once you have embarked upon a programme of other action you cannot reopen the investigation, even if other action fails. The decision to take other action closes the opportunity to investigate. You need to communicate this clearly to all parties.

Standards committees have very broad powers to direct you to deal with cases. The following are some alternatives to investigation:

- Mediation or conciliation – either between parties or involving the community to a greater or lesser extent.
- Training.
- Review of lessons learnt from the case.
- Peer mentoring.
- Review of protocols, standings orders or registers of interest.

If your standards committee decides to take other action, you will need to tell the parties that no conclusion has been reached on whether the subject member failed to comply with the Code of Conduct.

Circumstances where other action may be appropriate

It is not possible to set out all the circumstances where other action may be appropriate, but an example is where the authority to which the subject member belongs appears to have a poor understanding of the Code of Conduct and authority procedures. Evidence for this may include:

- a number of members failing to comply with the same paragraph of the Code
- officers giving incorrect advice
- failure to adopt adequate procedure rules
- failure to adopt the Code
- inadequate or incomplete protocols for use of authority resources
- a breakdown in relationships within the authority, evidence of which may include:
 - a) a pattern of allegations of disrespect, bullying or harassment
 - b) antagonism between various political factions or between members and officers.
 - c) a series of ‘tit for tat’ allegations.
 - d) ongoing employment issues, which may include resolved or ongoing applications to employment

other action

What action is appropriate?

Once you have identified what issues you think need to be dealt with, you should then consider how best to address them. The following methods have been used by ethical standards officers when issuing a direction:

Mediation:

- This is best conducted by a trained and qualified mediator.
- You should not set objectives for mediation as it is important that the results of mediation are determined by the parties and the mediator.
- You should explain to the mediator what issues you are seeking to resolve.
- You should make a recommendation as to who should attend mediation, but allow for additional people to take part.
- In cases of alleged bullying or intimidation you need to ensure that the parties understand that the mediator will not force them into a room together unless they are ready. You will also need to reassure them that they will not be left alone with the subject member or complainant.

Training:

- This can be conducted by you, one of your team or you can involve a local association or other external provider.

- You can require the members to attend training on a specific issue. This could be on interests, or wider areas such as standing orders or the Code of Conduct.
- The training may be about issues that are not directly related to the Code, for example anger management.

Review of lessons learnt:

- The council can be asked to review what has occurred with a view to improving their processes and procedures. You, another member of your team or someone from the local associations may assist them.
- You must make sure that the council understands that the purpose of a review is to learn from any mistakes that may have been made and not to change any decisions that have been made.

You can ask a council to assess:

- The decisions they have made on a specific issue. For example, a review of all the decisions they have made about the parish hall or members' register of interests.
- The interests that they have declared at meetings.
- Their standing orders or procedures.
- Their conduct towards the clerk or another member.

other action

Peer mentoring:

- You can arrange for an experienced clerk or chair from another authority to mentor a clerk or chair who is struggling.
- You can arrange for a successful authority to mentor the authority in difficulty.
- Mentoring can take the shape of:
 - a) one-on-one meetings
 - b) work shadowing of the mentor
 - c) a review carried out by the mentor on their protégé's work
 - d) anything else agreed by the mentor and their protégé

Troubleshooting

What if the parties refuse to cooperate?

- You need to make it clear that once a decision has been made to take other action, an investigation will not be undertaken.
- Identify why they are refusing to participate. Often refusal is based on a misunderstanding. For example, people might avoid mediation as they do not want to be in the same room as the person they believed bullied them. You can explain that they do not have to be in the same room as the other party as the mediator can conduct one-on-one discussions.

- Ultimately you can publish an article in the local newspaper outlining why your proposed other action failed.

How do I find a mediator?

- Ask other monitoring officers in your area as they may be able to make recommendations. Some monitoring officers are also trained mediators.
- Contact one of the many mediation organisations advertised on the internet.

Is the other action confidential?

- It is for you to determine what, if any, information you make public. Please see the section on **Confidentiality** on **page 23** for further information.

- It is worth involving the affected council in this decision, especially if it is a small parish council, where rumours could spread easily.

- If you do decide to make a public statement, you must make sure that the statement could not be misinterpreted as a finding of guilt or innocence of the subject member.

How to start other action:

- You should write to the parties concerned outlining:
 - a) what you are proposing
 - b) why you are proposing it
 - c) why they should co-operate
 - d) what you hope to achieve

other action

- It is often worth lining up the support of key players in the council or from external organisations, for example, the local county association may be able to help in cases involving parish or town councils.

outsourcing

There has been a significant disparity in the quality of investigations that have been conducted at a local level.

What to look for in an investigator

■ **Understanding of the Code of Conduct or experience of applying a similar code of practice.**

The investigating officer must have a clear understanding of what must be proven to establish the breach. This is so that they can properly understand the scope of the investigation. Local investigations have run into difficulty when the investigating officer has misunderstood the scope of the investigation, and investigated matters which could not constitute a failure to comply with the Code of Conduct. They have also run into difficulty when investigating officers sought to resolve factual disputes that would not affect the consideration of whether the subject member had failed to comply with the Code.

Successful investigating officers are those who have experience of applying the Code or experience of applying a similar code of practice. Solicitors or those with a background in criminal law enforcement may not necessarily be experienced in applying a code of practice, and it is worth establishing what their experience of applying such legislation is. You do not need to be a lawyer to be an investigator, although some lawyers may be experienced in this field.

■ **Experience of conducting interviews**

If the alleged conduct is so significant that if proven it would warrant referral to the First-tier Tribunal, then it is vital that the investigating officer has experience of conducting interviews which were taken to a tribunal. Such experience could have been gathered through conducting internal investigations in employment matters. It could also have been gained through working for other ombudsmen, complaint handling organisations, or through working in benefit or environmental enforcement.

If your principal investigator does not have investigative interviewing experience you should consider sending them on a training course. You could alternatively ask an officer who has a background in this to work with them on the case, for example someone from the benefits or environmental control departments.

■ **Experience of report writing**

The most successful investigation report writers have experience of writing reports for lay people or members. They understand that their reports need to be clear enough for someone with no legal background to understand how they reached their decision. They also need to be clear enough to show what factors were taken into account when reaching that decision.

outsourcing

■ Objectivity

It is difficult for an officer to consider whether a colleague was bullied or treated disrespectfully. There will be cases when an officer can investigate a complaint where a colleague is the complainant. However, this can only be done if the standards committee is sure that they have the necessary impartiality to conduct the investigation, with no perception of bias. This is one of the key benefits of reciprocal arrangements with other authorities, as they enable you to pass investigations involving your own employees to another council

Managing outsourcing

It is important to stay in control of outsourced investigations. To do so you will need to do the following:

■ Agree the scope of any delegation

In particular be clear who has responsibility for preparing the investigation report and presenting it to the standards committee.

■ Agree the scope of the investigation

In particular be clear what allegations are being investigated and what should happen if the investigator discovers evidence of further potential breaches of the Code of Conduct.

■ Agree a firm deadline

You need to agree when the case will be completed, and consider whether there will be any financial implications if the case is not completed on time.

■ Agree interim deadlines

You should agree when you will receive key pieces of work including the investigation plan, the draft report and the final report. If the investigating officer is new then you may wish to programme in regular investigation updates.

■ Agree the payment structure

You may want to consider how you structure the payment for investigations. It is not unreasonable to pay per stage of work completed, and for any additional investigative stages to be agreed as and when they occur.

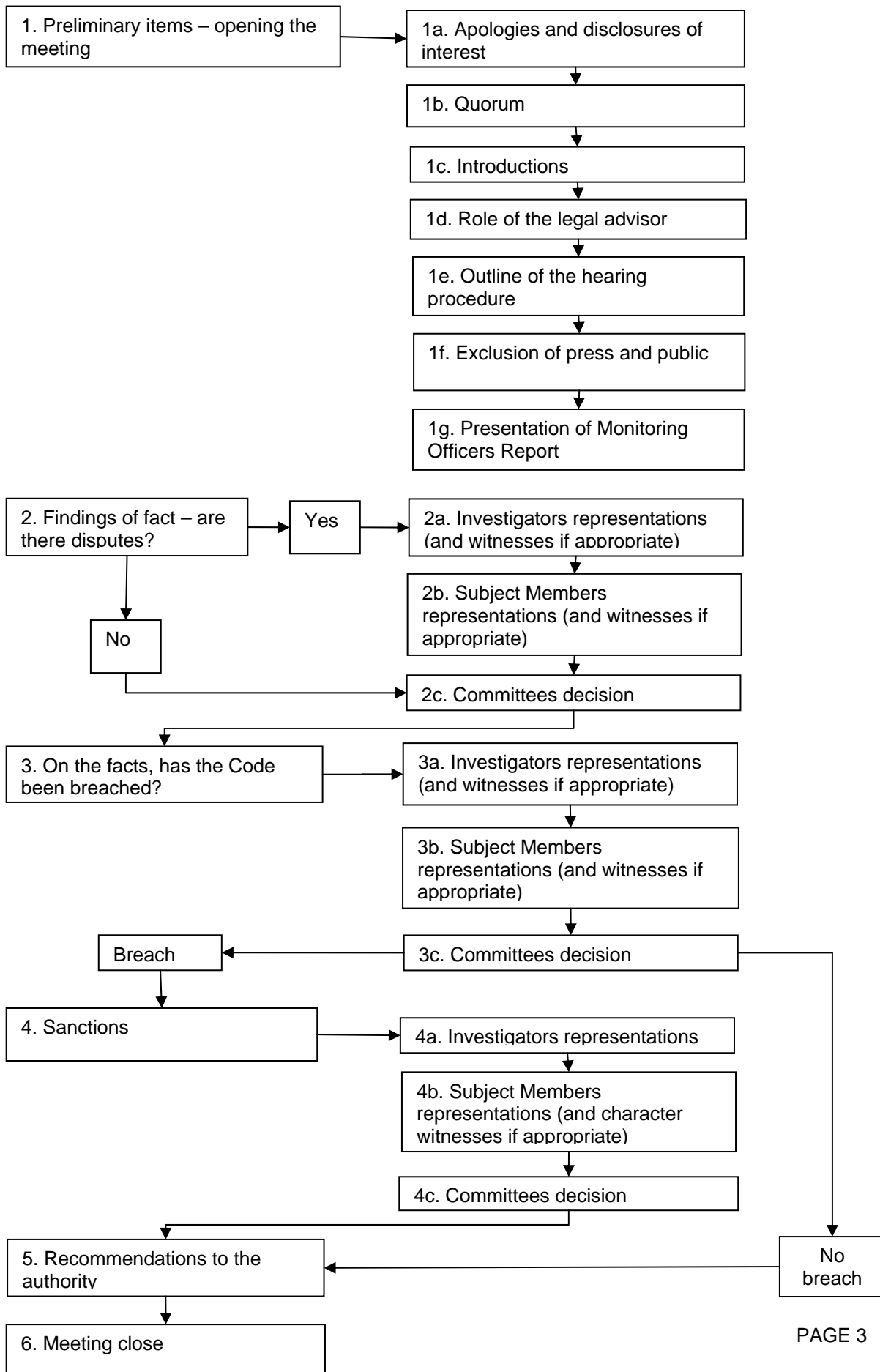
**Milton Keynes Council Standards Committee
Hearing Procedure**

Date adopted: 11 February 2010

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Flow Chart of the Hearings Process



Introduction to Local Standards Committee Hearings

Both the Councillor who is the subject of a complaint, and the person making the complaint will have been informed if the Assessment Sub-Committee of the Standards Committee has decided that the complaint should be investigated, either by Standards for England, or as a local investigation by the Monitoring Officer of Milton Keynes Council.

Once the Investigating Officer has carried out his investigation, the subject of the complaint and the complainant will receive a copy of the draft report and will have the opportunity to make comments. The Investigating Officer will update his report accordingly and issue the final report. The Investigator's Report may find that;

- There has been a breach of the Code of Conduct
- There has been no breach of the Code of Conduct

Consideration Sub Committee meetings

Once the report has been issued the Standards Committee will form a Consideration Sub-Committee. This Sub-Committee comprises of 3 to 5 members of the Standards Committee and is chaired by an Independent Member of the Standards Committee. If the matter concerns a Parish Councillor, a parish member must also sit on the Consideration Sub-Committee.

The Consideration Sub-Committee papers will remain confidential until the day of the meeting. When the meeting begins the Consideration Sub-Committee will decide whether or not the meeting should be held in public. If the Consideration Sub-Committee decides not to hold the meeting in public then anyone involved in the complaint will have to leave, along with any members of the public or press who have attended.

The purpose of the Consideration Sub-Committee is to receive the Investigating Officer's report and to make a decision as to whether to accept his findings. The Consideration Sub-Committee can decide to;

- Accept a finding of no breach of the Code
- Find that the matter should be considered at a hearing of the Standards Committee
- Find that the matter should be referred to the First-tier Tribunal (Local Government Standards in England) for determination

The last finding can only be made where the Consideration Sub-Committee consider that the action that it could take against the member would be insufficient (with regard to sanction) if they made a finding of failure to follow the Code and where the President of the First-tier Tribunal (Local Government Standards in England) has agreed to accept the case.

If the Consideration Sub-Committee decide that the matter should be heard by Milton Keynes Council Standards Committee then the pre hearing process is started.

Pre Hearing Process

This process is designed to ensure that matters at the hearing are dealt with fairly and efficiently. A letter will be sent to the subject of the complaint, proposing an initial date for the hearing (not normally more than three months after the Consideration Sub-Committee has convened) and forms will also be sent to the Subject Member. These forms will allow the Subject Member to indicate any needs they may have on the day of the hearing, whether they would wish to have the matter heard in private and how many witnesses they would like to call. The pre hearing process is also used to identify disagreements in the evidence presented in the Investigating Officers report, any other evidence the Subject Member wishes the Standards Committee Hearing Sub-Committee to take into account and any factors that the Subject Member believes should be taken into account as mitigation, if they are found to have breached the Code.

After the completed forms are received by the Monitoring Officer, they are then sent to the Investigating Officer for their comments. A meeting is then convened with the Chair of the Hearing. At this stage, the representations from both the Subject Member and the Investigating Officer are considered. The Chair will make decision as to the witnesses to be called, the administrative arrangements to be made and the date of the final hearing.

All of the information submitted during this process assists the formulation of the agenda for the hearing. This agenda and the covering letter are then sent to the Subject Member, the complainant and the witnesses.

At this stage the hearing agenda is confidential. The Hearing Sub-Committee will then make a decision on the day of the hearing as to whether the hearing should be carried out in public or in private. If the hearing is carried out in public, the papers will be made openly available at this stage.

Standards Committee Hearings

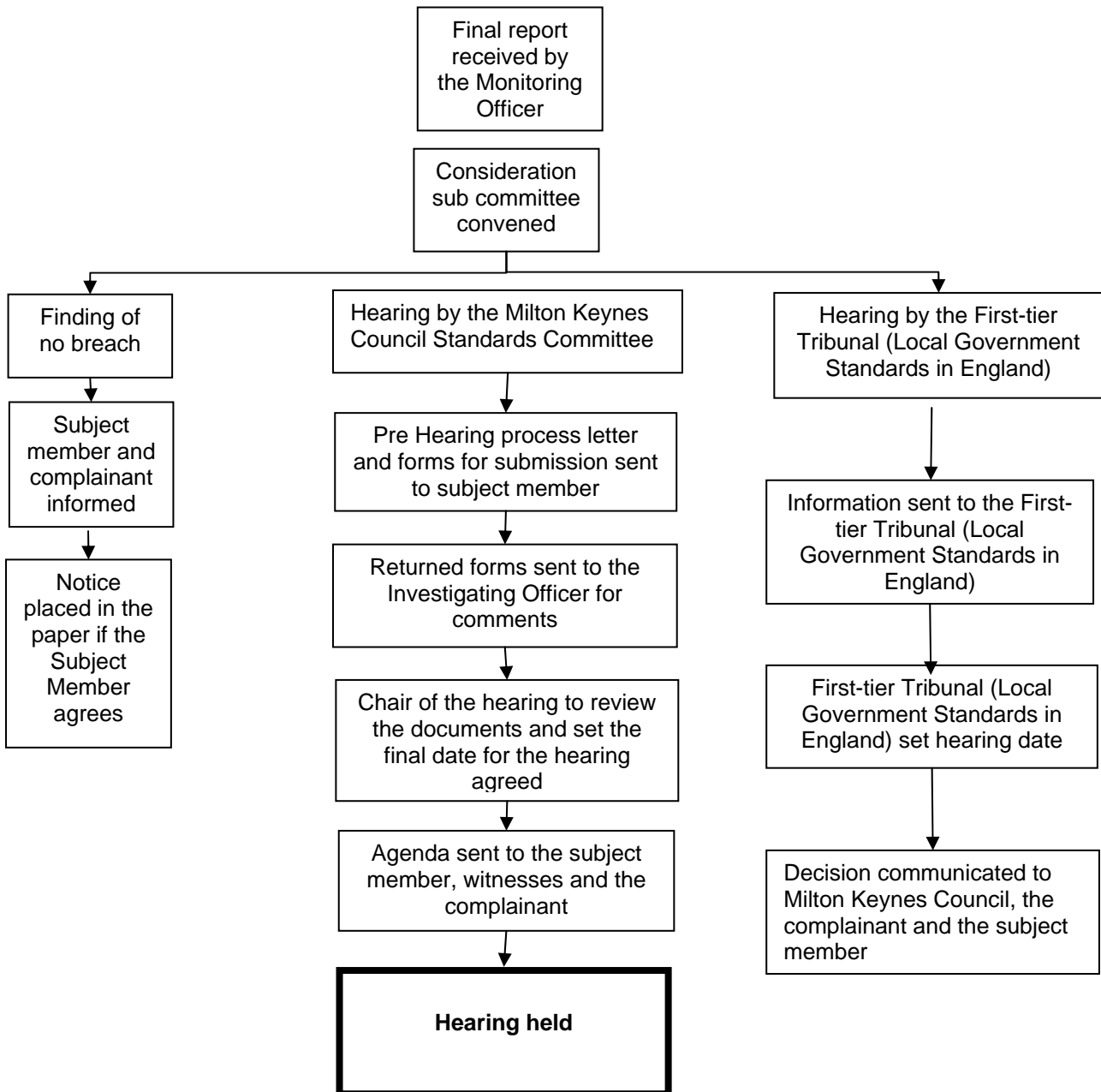
The purpose of the Standards Committee Hearing is to allow the Committee to consider the evidence supplied by both the Subject Member and the Investigating Officer and make a decision as to;

- The findings of fact
- Whether the Subject Member has breached the Code of Conduct and;
- Any sanction if it is found that the Subject Member has breached the Code of Conduct

A flowchart for the meeting can be found on page 1 of this document. The numbered boxes in the flow chart relate to the numbered sections below. In order to hear the matter, a Hearing Sub-Committee is formed. This Committee will comprise of 3-5 members of the Milton Keynes Council Standards Committee, including an Independent Chair and, if the matter is concerned with a Parish Council, one Parish member must also sit on the Hearing Sub-Committee.

If practical, the same people who sat on the Consideration Sub-Committee should also sit on the Hearing Sub-Committee.

Flow Chart of the Consideration and pre hearings process



1. Preliminary Items – opening the meeting

There are a number of preliminary items which will be considered when the meeting is opened. Some of these items are standard items which are found on Committee agenda's and some are unique to the hearing process

1a. Apologies and disclosures of interest

At the beginning of the meeting the Chair of the hearing will ask for any apologies and will ask members of the Hearing Sub-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.

1b. Quorum

The Chair will then check that the meeting is quorate to ensure that the correct members are sitting on the Hearing Sub-Committee before the hearing is commenced.

1c. Introductions

1ci) At the start of the hearing, the Chair will introduce each of the members of the Hearing Sub-Committee, the Member (if present), the Investigator (if present), the legal advisor, the Committee Support Officer and any other officers present.

1cii) The Investigating Officer or the Subject Member may choose to be represented by a solicitor or barrister during the hearing, or with the permission of the Committee, another person. It must be noted that the Member must bear the cost of such representation unless the Standards Committee has agreed to meet all or part of that cost.

1d. The role of the Legal Advisor

The Chair will then explain the role of the Legal Advisor. The Hearing Sub-Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the matters put before them in private. The substance of any legal advice given to the Committee at any stage in the proceedings will be shared with the parties present.

1e. Outline of the hearing procedure

1ei) The Chair will confirm that all present know the procedure which the Hearing Sub-Committee will follow in determining the case. The Chair will remind the Hearing that although this is a formal meeting, it is not judicial and evidence is not given under oath. The standard of proof to be met is on the 'balance of probabilities', as in civil proceedings and not 'beyond all reasonable doubt', as in criminal proceedings. The Chair will then ask the hearing if there are any questions, before continuing.

1eii) At this stage the Hearing Sub-Committee will resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

1eiii) The Chair will consider whether or not there are opportunities for conciliation that would be beneficial to the process. 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.

1eiv) If the Subject Member is not present at the start of the hearing and has not indicated his/her wish to proceed regardless:

- a. The Chair will ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing
- b. The Hearing Sub-Committee will then consider any reasons which the Subject Member has provided for not attending the hearing and will decide whether it is satisfied that there is sufficient reason for a failure to attend
- c. If the Hearing Sub-Committee is satisfied with the reasons it will adjourn the hearing to another date;
- d. If the Hearing Sub-Committee is not satisfied with the reasons, or if the Subject Member has not given any reasons, the Committee will decide whether to consider the case and make a determination in the absence of the Subject Member or adjourn the hearing to another date.

1f. Exclusion of the press and public

The Chair will ask the Member, the Investigator and the legal adviser to the Committee whether they wish to ask the Hearing Sub-Committee to exclude the Press or public from all or any part of the hearing. If any of them do 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 Hearing Sub-Committee should take into account are set out at **appendix 2** below.

1g. Presentation of the Monitoring Officers report

At the end of the preliminary matters, the Monitoring Officer (usually also acting as the legal advisor to the hearing) will present their report. This report will summarise the pre hearing process which has taken place, and outline whether or not the Subject Member has disagreed with any of the findings of fact in the Investigating Officers report.

- a. 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 Hearing Sub-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
- b. 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 Hearing Sub-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.

The Monitoring Officer will then ask the Hearing Sub-Committee to endorse the pre hearing directions

CONDUCTING THE HEARING

2. Findings of fact – are there disputes?

Introduction

This section is concerned with agreeing the findings of fact. Any facts which are disputed by the Subject Member must have been stated during the pre hearing process.

If the Subject Member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:

- **Disagree with the Subject Members explanation, accept the facts as they are presented in the Investigating Officers report and continue with step three of the hearing**
- **allow the Subject Member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary**
- **postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already**

If there is no disagreement about the facts, the Hearing Sub-Committee can move on to the next stage of the hearing; **3. On the facts, has the Code been breached?**

2a. Investigators representations (and witnesses if appropriate)

If there is a disagreement on the findings of fact the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Hearing Sub-Committee may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

If the Subject Member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

2b. Subject Members representations (and witnesses if appropriate)

The Subject Member should then have the opportunity to make representations to support their version of the facts and, with the Hearing Sub-Committee's permission, to call any necessary witnesses to give evidence.

Both the Subject Member and the Investigating Officer will then have an opportunity to 'sum up' the main points of the argument

At any time, the Hearing Sub-Committee may question any of the people involved or any witnesses. The Investigator may be given an opportunity to challenge any evidence put forward by witnesses called by the Subject member.

2c. Hearing Sub-Committees decision

The Hearing Sub-Committee will usually move to another room to consider the representations and evidence in private. On their return, the Chair will announce the Hearing Sub-Committee's findings of fact.

The Hearing Sub-Committee will take its decision on the balance of probability based on the evidence which it has received at the hearing.

The Hearing Sub-Committee's function is to make a determination on the findings of fact. It will do this by way of majority voting. 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 Legal Advisor. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Hearing Sub-Committee.

3. On the facts, has the Code been breached?

Introduction

The Hearing Sub-Committee then needs to consider whether, based on the facts it has found, the Subject Member has failed to follow the Code. The Hearing Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.

3a. Investigators representations (and witnesses if appropriate)

The Hearing Sub-Committee should then consider any representations on whether the Code has been breached from the Investigator.

The Investigating Officer may also, at this point, call witnesses if permission is granted by the Hearing Sub-Committee.

The Subject Member may be given an opportunity to challenge any evidence put forward by any witness called by the Investigator.

3b. Subject Members representations (and witnesses if appropriate)

The Subject Member will be invited by the Chair to give relevant reasons why the committee should decide that they have not failed to follow the Code.

The Subject Member may, at this point also call witnesses if permission is granted by the Hearing Sub-Committee. The Investigator may be given an opportunity to challenge any evidence put forward by witnesses called by the Subject Member

Both the Subject Member and the Investigating Officer will then have an opportunity to 'sum up' the main points of the argument

3c. Hearing Sub-Committees decision

At the conclusion of the Member's response, the Chair will ensure that each member of the Hearing Sub-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.

The Hearing Sub-Committee will then move to another room to consider the representations. On their return, the chair will announce the Hearing Sub-Committee's decision as to whether the Subject Member has failed to follow the Code.

The Hearing Sub-Committee will take its decision on the balance of probability based on the evidence which it has received at the hearing.

The Hearing Sub-Committee's function is to make a determination on the whether the Member has breached the Code of Conduct. It will do this by way of majority voting. 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 Legal Advisor. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Hearing Sub-Committee.

If the Hearing Sub-Committee decides that the Code has not been breached, it will inform the Subject Member and the Hearing Sub-Committee will then consider recommendations to the Council (section 5)

Introduction

If the Hearing Sub-Committee decide that there has been a breach of the Code of Conduct by the Member concerned, they will then go on to consider sanctions.

The sanctions available to the Hearing Sub-Committee can be found at appendix 3.

4a. Investigators representations

The Hearing Sub-Committee will consider any verbal or written representations from the Investigating Officer as to:

- whether the Hearing Sub-Committee should apply a sanction
- what form any sanction should take

4b. Subject Members representations (and character witnesses if appropriate)

The Subject Member may introduce agreed character witnesses to make a statement in support of the subject member

The Hearing Sub-Committee will consider any verbal or written representations from the Subject Member as to:

- whether the Hearing Sub-Committee should apply a sanction
- what form any sanction should take

Both the Subject Member and the Investigating Officer will then have an opportunity to 'sum up' the main points of the argument

4c. Hearing Sub-Committees decision

The Hearing Sub-Committee may question the Investigator and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

The Hearing Sub-Committee will then deliberate in private to consider whether to impose a sanction on the Subject Member and, if so, what sanction it should be.

On their return, the chair will announce the Hearing Sub-Committee's decision as to the sanction that the Hearing Sub-Committee will impose.

5. Recommendations to the authority

Regardless of whether or not the Hearing Sub-Committee find that Subject Member has breached the Code of Conduct, the Hearing Sub-Committee may make recommendations to the authority, with a view to promoting high standards of conduct among Councillors.

6. Close of the meeting

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

A short written decision will be agreed by the Hearing Sub-Committee and made available on the day of the Hearing.

Within two weeks of the hearing, the Committee Support officer will agree a formal written notice of the Hearing Sub-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 20 of the Standards Committee (England) Regulations 2008.

The Member against whom a finding has been made will be informed by the Monitoring Officer of his or her right to apply for permission to appeal to the President of the First-tier Tribunal (Local Government Standards in England).

Interpretation

- a. 'Subject 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 investigating officer 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 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.
- e. The "Consideration Sub-Committee" means a sub-committee of the Milton Keynes Council Standards Committee appointed to consider the Investigator's report
- f. "The Chair" refers to the person presiding at the hearing.
- g. "The Hearing Sub-Committee" means a sub-committee of the Milton Keynes Council Standards Committee appointed to hear the matter.
- h. '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.

Access to Standards Committee Hearings and Exempt Information

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 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:
 - (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.
- 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:-
 - (i) in line with the law; and
 - (ii) 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.
9. Access to information concerning this procedure is governed by the **Standards Committee (England) Regulations 2008, regulation 8(6)**. This applies Schedule 12A of the Local Government Act 1972 to Standards Committees with a number of modifications. These provisions fall under the following descriptions, all of which are subject to the provision that information may only be exempt 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.
 1. Information relating to any individual;
 2. Information which is likely to reveal the identity of an individual;
 3. Unless that information is required to be registered under:
 - (i) the Companies Act 1985;
 - (ii) the Friendly Societies Act 1974;
 - (iii) the Friendly Societies Act 1992;
 - (iv) the Industrial and Provident Societies Acts 1965 to 1978;
 - (v) the Building Societies Act 1986; or
 - (vi) the Charities Act 1993,
 information relating to the financial or business affairs of any particular person (including the authority holding that information).

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;
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
6. Information which reveals that the authority proposes:
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime;
- 7(a) Information which is subject to any obligation of confidentiality;
- 7(b) Information which relates in any way to matters concerning national security;
- 7(c) 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.”.

Sanctions available to the Hearing Committee

The sanctions which are available to the Committee under the Standards Committee (England) Regulations 2008, regulation 19 (3), are any, or any combination, of the following:

- (a) censure of that member;
- (b) restriction for a period not exceeding 6 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 those restrictions –
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a member;
- (c) partial suspension of that member for a period not exceeding 6 months;
- (d) suspension of that member for a period not exceeding 6 months
- (e) that the member submits a written apology in a form specified by the standards committee
- (f) that the member undertakes such training as the standards committee specifies
- (g) that the member participate in such conciliation as the standards committee specifies;
- (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee.
- (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies.
- (j) suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee.
- (k) suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies

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.

The Committee may also make the decision not to impose a sanction on the Subject Member.

Factors to be taken into Account

In considering the sanction the Committee may take into account the following factors, along with any relevant circumstances;

- What was the Subject Member's intention?
- Did the Subject Member know that they were failing to follow the Code of Conduct?
- Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored 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?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the Subject Member.

Mitigating and Aggravating Factors

Aggravating factors

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

Mitigating Factors

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

The First-tier Tribunal (Local Government Standards in England) also advises the following:

In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy.

Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

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

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

DISPENSATIONS

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Acting AD Law and Governance

1. Purpose

- 1.1 To present to the Standards Committee a list of decisions which might be subject to the granting of a dispensation under s33 of the Localism Act 2011

2. Recommendations

- 2.1 That dispensations be granted from Section 31(4) of the Localism Act 2011 on the basis that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business, such dispensations to be made in respect of all Members of Milton Keynes Council and take effect from 30 August 2012 for the period of four years:
- 2.1.1 housing, where the Member is a tenant of the authority; provided that those functions do not relate particularly to that Members tenancy or lease;
 - 2.1.2 school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends;
 - 2.1.3 an allowance, payment, pension or indemnity given to Members;
 - 2.1.4 any ceremonial honour given to Members; and
 - 2.1.5 setting Council Tax or a precept under the Local Government Finance Act 1992.
- 2.2 That the Monitoring Officer be designated as the proper officer of the authority for the purposes of written requests by a Member(s) or co-opted Member(s) of the authority for the grant of a dispensation.
- 2.3 That the Monitoring Officer be delegated the power to grant dispensations under any of the heads in Section 33 of the Localism Act on the basis that the requirement for a dispensation in the opinion of the Monitoring Officer is urgent.

- 2.4 That where the Monitoring Officer has used his delegated powers to grant a dispensation a report on the use of the power be prepared and submitted to the next meeting of the Standards Committee.

3. Background

- 3.1 The provisions on dispensations from Members taking part in or voting on matters are significantly changed by the Localism Act 2011.

General exemptions

- 3.2 Previously, general exemptions were provided to all Members, by way of statutory instrument with regard to prejudicial interests in any business of the authority where that business related to functions of the authority in respect of;

- “1. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
2. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
3. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
4. an allowance, payment or indemnity given to members;
5. any ceremonial honour given to members; and
6. setting council tax or a precept under the Local Government Finance Act 1992.”

- 3.3 The new law on interests does not reproduce these exemptions and as a result, Members will effectively be both breaching their Code of Conduct and also committing an offence, should they take part in a meeting where any of these matters are being discussed and they have a disclosable pecuniary interest in the matter.

- 3.4 Where these matters arise it would appear prudent for a general dispensation be granted to apply to all Members. It is recommended that this general dispensation should run for 4 years from the date that it is given.

- 3.5 The restrictions on Members taking part in decisions where they are in arrears in Council Tax (Local Government Finance Act 1992, s106) cannot be dispensed with under the new regime and remain in force.

Individual dispensations

- 3.6 Previously, under the 2007 Code of Conduct, a Member who has a prejudicial interest could apply to Standards Committee for a dispensation on two grounds:

1. That at least half of the members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is

realised how many Members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and

2. That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).

3.6 No dispensations were ever granted under the previous regime.

3.7 Under section 33 of the Localism Act 2011, a dispensation may be granted in the following circumstances:

- i. That so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
- ii. That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;
- iii. That the authority considers that the dispensation is in the interests of persons living in the authority’s area;
- iv. That, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
- v. That the authority considers that it is otherwise appropriate to grant a dispensation.

3.8 Any grant of a dispensation must specify how long it lasts, and only be in effect up to a maximum of 4 years.

3.9 It is suggested that it may be most appropriate for dispensations to be granted by the Standards Committee. This will ensure full Member scrutiny and allow for the decision to grant dispensations to be taken publicly; however there are times when a conflict may be discovered just prior to or at a meeting and adjourning the meeting due to it not being quorate would be at best inconvenient and may result in delay and detriment to the Council or other parties.

3.9.1 In order to guard against this situation arising it would be useful to delegate urgency powers to the Monitoring Officer in order to allow him or her to grant a dispensation. However, to ensure that the public element of the decision is preserved, it is suggested that the Monitoring Officer would be under a duty to report any use of the power to the next full meeting of the Standards Committee.

Background Papers: None