

STANDARDS COMMITTEE

28TH SEPTEMBER 2004

PRESENT:

Independent Members

M Wilkinson (Chair)
J Parker (Independent Member)
Ms C Grant (Reserve Independent Member)

Councillors

E Nash
G Kirkland
J L Carter

Parish Members

Councillor Mrs P Walker (Pool in Wharfedale Parish Council) (Reserve Parish Member)

23 Appeals Against the Refusal of Inspection of Documents

It was reported that there were no appeals under procedure rule 23 of the access to information procedure rules.

24 Exclusion of Public

No items were identified where resolutions may be moved to exclude the public.

25 Late Item

There were no late items admitted to the agenda by the Chair.

26 Declaration of Interests

The Chair declared a personal/prejudicial interest, under section 81(3) of the Local Government Act 2000 and paragraphs 9 to 12 of the Members' code of conduct, in agenda item 9 concerning the appointment of independent members to the Standards Committee (minute 31 refers) and indicated that he would leave the meeting during consideration of that item.

27 Apologies for Absence

Apologies for absence were reported from Councillor P Stretton (Parish Council Member).

28 Minutes of the Previous Meeting

- (a) The minutes of the Standards Committee held on 20th July 2004 were approved.
- (b) Further to minute 6(b), it was reported that the Director of Legal and Democratic Services was unable to provide a report on the outcome of an inquiry by the Committee on Standards in Public Life into the maintenance of high standards of conduct in public bodies as the committee was still receiving evidence. The report would be scheduled for the January 2005 meeting.
- (c) Further to minute 21, it was reported that the majority of unscheduled items on the work programme had now been scheduled and a new version of the programme was provided (minute 39 refers).
- (d) Further to minute 15, Members were advised that the hyperlink from the Leeds City Council website to the Standards Board website had been introduced on 30 July 2004 and would be removed at the end of the six month trial period, pending a report back to this committee.

29 Standards Board for England Bulletin

The committee considered a report by the Director of Legal and Democratic Services, together with the latest bulletins issued by the Standards Board for England, providing information and advice on a range of code of conduct issues.

RESOLVED – To note the latest bulletins from the Standards Board for England.

30 Standards Board for England Correspondence

The committee considered a report by the Director of Legal and Democratic Services concerning correspondence received from the Standards Board about two issues raised at the last meeting, regarding the proposed introduction of the Board's web banner on the City Council's website and concerns over the handling of an investigation by the Standards Board involving a Member of Leeds City Council.

Members debated whether to continue with the use of the banner as a result of the Board's reply to the committee's concerns. It was felt that the six month trial period should be continued and the situation reviewed at the end of that period.

Further to minute 12, Members reiterated their concern over the Board's handling of an investigation involving a Leeds City Council Member. The committee discussed the case in the light of the need for the Board not to investigate cases unnecessarily, together with the Board's interpretation of the relevant legislation which prompted the investigation.

RESOLVED – To request the Director of Legal and Democratic Services to write to the Chief Executive of the Standards Board in pursuance of this formal complaint and ask him to review the Board's initial response.

31 Appointment of Independent Members to the Committee

Further to his declaration of a personal and prejudicial interest in minute 26, Mr Wilkinson vacated the room for the duration of this item and Mr Parker was appointed to the Chair.

The committee considered a report by the Director of Legal and Democratic Services advising Members of progress on arrangements for the appointment of Independent Members to the committee and seeking guidance on two outstanding issues.

RESOLVED –

- (a) To note progress to date on the appointment of Independent Members
- (b) To invite Councillor J L Carter or Councillor Kirkland to attend the interviews on October 18th as an observer, if available
- (c) To note that Members will be provided with biographical details of the applicants following the interviews
- (d) To note that an additional meeting of the committee will be held on October 19th at 2pm to confirm the new appointments and make a recommendation to Council on 3rd November

Mr Wilkinson returned to the meeting and resumed the Chair at the conclusion of this item

32 Appointment of Parish Member

This item was deferred due to the absence of the Parish Member, Councillor Stretton.

33 Instructions to Staff in Political Group Offices

The committee considered a report by the Director of Legal and Democratic Services, together with the instructions recently given to clarify the roles of support staff in the political group offices, following a request made at the committee meeting held on 20th July 2004.

The Chief Democratic Services Officer outlined the background to the review and reissue of the instructions from 1st May 2004 and indicated that further instructions were being developed for Members Services staff outside the group office structure. Elected Members indicated concern in relation to the possibility of staff in group offices being supporters of other political parties, in view of the Council's decision not to establish posts of political group assistants under s9 of the Local Government and Housing Act 1989.

It was suggested that as these matters were beyond the committee's remit, elected Members may wish to pursue these issues elsewhere.

RESOLVED – To receive and note the report

34 The Third Annual Assembly of Standards Committees

The committee noted a report by the Director of Legal and Democratic Services together with supporting documents, regarding the third Annual Assembly of Standards Committees held on 13-14 September 2004 at the ICC in Birmingham.

The Chair, Independent Member and Chief Legal Services Officer reported on the successful outcome of the conference. Particular reference was made to initial consultation on the possible revision of the model code of conduct.

The Chief Legal Services Officer circulated a document discussed at a related workshop providing examples of non-referred cases. Members discussed the Board's approach to such cases and the possible involvement of the Standards Committee.

RESOLVED – To receive and note the report

35 Consultation Papers Issued by the Office of the Deputy Prime Minister

The committee considered a report by the Director of Legal and Democratic Services concerning two consultation papers issued by the Office of the Deputy Prime Minister (ODPM) regarding a draft code of conduct for local government employees and a review of restrictions on the political activities of local authority employees and the pay of political assistants.

RESOLVED –

- (a) To note the report
- (b) That the ODPM be requested to extend the deadline for comments to allow the committee to consider a draft response at its next meeting on 25th November 2004
- (c) That committee Members be invited to notify the Constitution Support Officer of any comments on the issues raised in the consultation paper, prior to the next meeting

36 The Adjudication Panel for England: Decisions of Case Tribunals

The committee considered a report by the Director of Legal and Democratic Services summarising the decisions of case tribunals established by the Adjudication Panel for England in respect of allegations of misconduct and considered whether there were any lessons to learn for Leeds.

Members discussed the issue of tribunals disqualifying Members for specific periods that coincided with elections, which prevented them from standing, thus effectively constituting a ban of a much longer period. It was also noted that the voluntary insurance scheme to cover the costs of legal representation for Members facing allegations of misconduct was now in place.

RESOLVED – To note the latest decisions of the Adjudication Panel's case tribunals.

37 Review of Protocol for Elected Members/Education Leeds Relations

The committee considered a report by the Director of Legal and Democratic Services advising the committee of the outcome of a review of the protocol for elected Members/Education Leeds relations.

RESOLVED – To note the report and approve the following recommendations:

- (a) To note the contents of this report, particularly the comments made during the consultation period
- (b) To authorise the Director of Legal and Democratic Services to make any consequential amendments to the provisions of the protocol relating to access to information, once she has completed the review of the Council's access to information rules
- (c) To note the proposed actions by the Director of Legal and Democratic Services to raise the awareness of the protocol
- (d) Subject to (e) below, to approve the amendments to the protocol highlighted in appendix 1 of the report, subject to confirmation by the Board of Education Leeds that they also approve the amended protocol
- (e) That the Director of Legal and Democratic Services be requested to report back to this committee on proposals to attach a schedule to the protocol outlining the distinct responsibilities of Education Leeds and update the schedule in order to implement any new legislation or to clarify its meaning

38 Arrangements for Future Meetings

The committee considered a report by the Director of Legal and Democratic Services regarding arrangements for future meetings of the Standards Committee, following a request at the previous meeting of the committee on July 20th 2004.

Members discussed the differing arrangements across other authorities and how they compared to those in Leeds and the possibility of raising this issue at the next Independent Members Forum

RESOLVED – To continue meeting on six occasions per year in 2004/05 for the reasons outlined in paragraphs 3.04 and 3.05 of the report, but that the matter be reviewed prior to the next municipal year

39 Standards Committee Work Programme

- (a) Members noted the updated work programme identifying future reports for consideration by this committee
- (b) Members requested that reports to this committee be as succinct as possible and that executive summaries, akin to those used for Executive Board meetings be included in future where appropriate

STANDARDS COMMITTEE

19TH OCTOBER 2004

PRESENT:

Independent Members

J Parker (Independent Member) In the Chair
C Grant (Reserve Independent Member)

Councillors

J L Carter
G Kirkland

Parish Members

Councillor P Stretton (Wetherby Town Council)
Councillor Mrs P Walker (Pool in Wharfedale Parish Council) (Reserve Member)

40 Appeals Against Refusal of Inspection of Documents

It was reported that there were no appeals under Procedure Rule 24 of the Access to Information Procedure Rules

41 Exclusion of Public

The following item was identified where a resolution may be made to exclude the public:

Appointment of Independent Lay Members (Appendix A only under Access to Information Procedure Rule 10.4(1))

42 Late Items

There were no late items admitted to the agenda by the Chair for consideration

43 Declaration of Interests

There were no declarations of personal/prejudicial interest for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 9 to 12 of the Members Code of Conduct

44 Apologies for Absence

Apologies for absence were reported from Councillor E Nash

45 Appointment of Independent Lay Members

Members considered the report of the Director of Legal and Democratic Services regarding the proposed appointment of two independent lay members to the committee for approval by Council on 3rd November 2004, following an officer interview panel on 18th October 2004

Members took advice from the Monitoring Officer regarding the appointment of the Chair

RESOLVED –

(a) That Council be recommended to approve the re-appointment of Mike Wilkinson as an independent member from 12th December 2004 until 1st May 2008

(b) That Council be recommended to approve the appointment of Rosemary Greaves as a reserve independent member from 12th December 2004 until 3rd May 2007

(c) That Council be recommended to approve the appointment of Cheryl Grant from reserve independent member to full independent member from 12th December 2004 until the expiration of her current term of office on 26th March 2006. (Cheryl Grant declared a personal and prejudicial interest and left the room during the consideration of this matter)

(d) To note that the Chair will be appointed by the committee at the next meeting to serve from 12th December 2004 until the next Annual General Meeting of the Council



LEEDS
CITY COUNCIL

AGENDA

ITEM NO.: **7**

Originator: Ella Anderson

Tel: 0113 395 1632

REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

MEETING: STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : STANDARDS BOARD PUBLICATIONS

Electoral Wards Affected :

Specific Implications For :

Ethnic Minorities

Women

Disabled People

Executive Board Decision

Eligible for Call In

Not eligible for Call In (details contained in the report)

1.0 PURPOSE OF REPORT

- 1.1 To notify Members of the latest bulletin, Standards Committee Newsletter and Town and Parish Standard Newsletter from the Standards Board for England.
- 1.2 The bulletin is issued to all Members and voting co-opted Members of Council, parish clerks (via the Standards Committee agenda) and key officers within the authority.

2.0 CONTENTS OF THE BULLETIN

2.1 Features in this month's bulletin include:

- The coming into force of the Local Authority (Code of Conduct) (Local Determination) (Amendments) Regulations 2004
- New guidance published for Members involved in lobby and campaign groups or who are dual-hatted. This is currently available on the internet at www.standardsboard.co.uk and will shortly be circulated to all Members by officers.
- A new, more rigorous referral process to be introduced to ensure that only the most serious allegations of misconduct are investigated
- The latest referral statistics in relation to allegations of misconduct
- The consultation reviewing the Code of Conduct to commence at the end of the year
- The roles and entitlements of Councillors who are partially or fully suspended

- The clarification of The Standards Board's advice on Freemasons and declarations of interests

3.0 CONTENTS OF THE STANDARDS COMMITTEE NEWSLETTER

3.1 Features in the latest newsletter include:

- The recruitment of more staff to speed up the case work undertaken by the Standards Board
- A new appeals procedure against referral decisions
- 2003/04 statistics from the Adjudication Panel
- Answers to procedural questions
- The appeals process against Standards Committee decisions
- Dispensations and when to apply for one
- Update on referrals for local determination

4.0 CONTENTS OF THE TOWN AND PARISH STANDARD NEWSLETTER

4.1 Features in the latest Town and Parish Standard include:

- The new guidance *Lobby groups, dual-hatted members and the Code of Conduct*
- The results of the research commissioned by the Board into the needs of county associations
- The announcement of the Code of Conduct review
- The latest statistics on Parish and Town Council referrals and investigations
- The Committee for Standards in Public Life due to publish its findings in December
- The reassessment of the current referral criteria
- The publication of the second *Case Review*

5.0 RECOMMENDATION

5.1 Members are asked to note the latest bulletin and newsletters from the Standards Board for England.



the
Standards Board
for England

22 October 2004

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Chief Executive

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Dear Ella

Re: SBE4384.03/SBE SC99

I am writing in response to your letter of 6 October 2004.

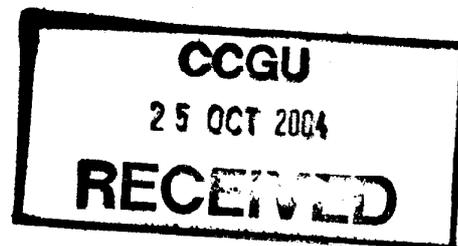
I am sorry I have not yet been able to send you a substantive reply, but I wanted to assure you that I carefully considered the points you raise, in conjunction with my senior colleagues here, and that a reply is now being prepared.

As I shall be away from the office next week, Chris Boothman, our Head of Legal Services, is progressing the matter in my absence.

You raise important issues, and we are giving very careful consideration to them.

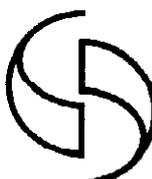
Yours sincerely

David Prince
Chief Executive



27 October 2004

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Dear Ms Anderson

Ref: SBE4384.03/SBE SC99

Thank you for your letter of 6 October addressed to David Prince. Your letter has been passed to me for a response. I would like to apologise for the delay in responding.

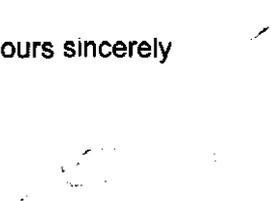
Whilst I can understand the concerns expressed by your standards committee the view which the Board has taken is that it is in the public interest that the results of our investigations should be made freely available. Where members are found not to have breached the Code the case summary makes this clear. Far from damaging the councillor involved its publication on the website constitutes a public exoneration. So, in this case, it is quite clear from the case summary that Councillor Fox was not found to have breached the Code of Conduct.

We have sought Leading Counsel's advice on the proper approach to section 59(1)(b) of the Local Government Act 2000. His advice was that where an ethical standards officer comes across evidence indicating a potential failure to comply with the Code he or she is under an obligation to investigate it except where the circumstances are such that the ethical standards officer is satisfied that, whatever the outcome of such an investigation, no action would be taken.

In the circumstances of this case, the Ethical Standards Officer was made aware of irregular payments that were made directly to Councillor Fox from Parish Council funds. The Monitoring Officer of Leeds City Council had no involvement in the issuing of cheques by the Parish Council and accordingly could not provide the Ethical Standards Officer with any evidence in relation to this matter. These were matters that required a response and the provision of evidence, such as bank statements, directly from the subject member.

Once again, I would like to apologise for the delay in responding.

Yours sincerely


Chris Boothman
Head of Legal Services



AGENDA
ITEM NO.: 8
Originator: Ella Anderson
Tel: 395 1632

REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

MEETING: STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : STANDARDS BOARD FOR ENGLAND CORRESPONDENCE

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>

1.0 PURPOSE OF REPORT

1.1 To consider the response received from the Standards Board for England in relation to the issues raised at the last meeting regarding the handling of an investigation into a Leeds City Council Member and the interpretation of legislation.

2.0 BACKGROUND INFORMATION

2.1 Members may recall the discussion at the last meeting of the Standards Committee on 28th September, where it was agreed that officers would write to the Standards Board to express Members' continued concern over the handling of the Board's investigation and also their interpretation of s59(1)(b) of the Local Government Act 2000. Members asked that this be treated as a formal complaint.

2.2 Officers wrote to the Board setting out Members concerns and the Board's response is attached here.

3.0 POSSIBLE FURTHER ACTION

3.1 The next step in the complaints procedure is to refer the matter to the Parliamentary Ombudsman.

3.2 Officers have spoken to the Head of Legal Services at the Standards Board, who has expressed a willingness to speak to Members either by telephone, or in person, should the Committee feel so strongly about this matter and want further explanation regarding the Board's conduct.

4.0 RECOMMENDATION

4.1 Members are asked to note the response and advise officers on what course of action, if any, they now wish to pursue.



LEEDS
CITY COUNCIL

AGENDA
ITEM NO.: 9
Originator: Ella Anderson
Tel: 39 51632

REPORT OF CHIEF DEMOCRATIC SERVICES OFFICER

REPORT TO STANDARDS COMMITTEE

DATE : 25th NOVEMBER 2004

SUBJECT : EXTERNAL AUDIT REPORT – ETHICAL GOVERNANCE

Electoral Wards Affected :

Specific Implications For :

- Ethnic Minorities
- Women
- Disabled People

1.0 PURPOSE OF REPORT

- 1.1 This Report draws to the attention of the Committee an External Audit Report entitled 'Setting High Ethical Standards' which was published in October 2004.
- 1.2 Additionally this report will be considered by the following Committees:

Committee	Date to be Considered
Council Business Committee	17 th November 2004
Scrutiny Board (Central and Corporate Functions)	30 th November 2004

- 1.3 The Full Report is attached as Appendix 1. The Monitoring Officer will be in attendance should Committee Members have any queries regarding the Audit process.

2.0 SUMMARY OF REPORT

- 2.1 The purpose of the Audit was to review whether the council has established appropriate governance arrangements to comply with Part III of the Local Government Act 2000. They also formed a view, mainly through discussions with officers and surveys of officers and members, as to whether the council's arrangements are operating effectively and whether it is promoting a sound culture.
- 2.2 The Audit Commission found that Leeds City Council has responded positively and comprehensively to the requirements for good corporate governance, by establishing relevant arrangements including a Standards Committee with an independent chair (in line with good practice). In addition, there is a members' code of conduct that complies with the Office of the Deputy Prime Minister (ODPM) model, and strengthened procedures for registering interests and gifts and hospitality. It found that the Standards Committee follows many best practice procedures and has good officer support, primarily from the Monitoring Officer.
- 2.3 The Commission further noted that under the existing Constitution there is scope for the Standards Committee to develop its links with both internal and external audit, for example by receiving a summary of reports issued each quarter and, perhaps, an annual presentation summarising all audit activity. It noted, however, that it common with many authorities, the council is considering whether to establish an 'Audit' Committee to respond to various new members' responsibilities and any future considerations about the terms of reference for the

Standards Committee will need, therefore, to take into account any debate about also establishing an 'Audit' Committee.

- 2.4 The Commission notes at page 2 of its Report some areas where officers and/or Members do not feel totally confident regarding governance arrangements and at page 3 of its Report it sets out some key recommendations to address those few opportunities for the council to improve its procedures further. The Recommendations are also set out in the action plan, which is to be found at pages 48 and 49 of the Commission's Report. That Action Plan also sets out the Council's response to their recommendations.
- 2.5 One particular issue upon which the Committee may wish to reflect is the very low response rate of members to the surveys issued by the commission as part of the process. As the Report points out in the footnote on page 2 'any inferences made from the members' summary should be done so in the context of a very low response'. Thought clearly needs to be given as to how to increase the level of response for any exercises of a similar nature which may be undertaken.

3.0 RECOMMENDATIONS

- 3.1 The Standards Committee is asked to:
- receive the external audit report on Ethical Governance;
 - note the recommendations and the response to the audit report;
 - request the Chief Democratic Services Officer to provide further reports in due course, providing detail of the progress in achieving the recommendations.



REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

MEETING: STANDARDS COMMITTEE

DATE : 25th NOVEMBER 2004

SUBJECT : APPOINTMENT OF PARISH MEMBER

Electoral Wards Affected :

Specific Implications For :

Ethnic Minorities

Women

Disabled People

1.0 PURPOSE OF REPORT

1.1 To advise Members of arrangements for the appointment of a parish member to the committee following the expiration of the current parish representative's term of office

2.0 TERM OF OFFICE

2.1 The term of office for the parish representative appointed to the committee (Councillor Peter Stretton) will expire on 28th February 2005.

2.2 It is suggested that the appointment of a parish member should be made on the same basis as the independent members, as agreed at the committee on 20th July 2004. Parish members should be appointed for a term of four years, to reflect LCC elected members' term of office. Therefore, it is suggested that the appointment to be made from February 2005 should terminate to coincide with the elections to be held in May 2008 and thereafter appointments should be for a four-year term.

3.0 RESERVE PARISH MEMBER

3.1 The current parish representative (Councillor Peter Stretton) has indicated that he does not wish to reapply. It is therefore proposed that the reserve parish member (Councillor Pat Walker) be appointed to the position of parish representative, in line with the arrangements previously agreed for the promotion of reserve independent members on the committee. As a result of this, it will be necessary to appoint a new reserve parish member to fill the vacancy.

4.0 PROCEDURE

4.1 It is proposed to adopt the same procedure for filling this vacancy as used for the previous appointment of parish members, agreed by the committee on 5th June 2003.

4.2 The Yorkshire Local Councils Associations (YLCA) will be asked to invite nominations from all Leeds parish and town councils. Candidates will be interviewed by the Chair of this committee and two YLCA representatives in early-mid January 2004. Details of the successful candidate will be reported to the committee meeting on 27th January 2005.

5.0 RECOMMENDATION

5.1 Members are asked to agree the above arrangements for appointing a parish member to the committee

ANNEX A

Summary of questions posed

Political restrictions

- Q.1** Would reducing the number of officers covered by the restrictions be compatible with maintaining the apolitical nature of local government employees? (para 2.1)
- Q.2** If a reduction in the number is considered desirable, how could this best be achieved? Would it be appropriate to raise the spine point threshold at which posts become politically restricted? If so, to what level/by how many points? (para 2.4)
- Q.3** Would broad exemptions from the restrictions based on job description be appropriate and workable? If so, what categories of work should be considered exempt, and why? Conversely, are there areas of work not currently covered by restrictions that should be? If so, which? (para 2.5)
- Q.4** Should the nature of the restrictions on political activity be redefined? If so, how? (para 2.5)

Role of the Independent Adjudicator

- Q.5** Is there any need to change the current arrangement for independent adjudication? If the Independent Adjudicator is to be retained, should he/she continue to be appointed by the Secretary of State and operate through the Office of the Deputy Prime Minister? (para 3.1)
- Q.6** Would it now be appropriate for Monitoring Officers to take over the role of determining whether posts should be exempt from restrictions? (para 3.5)
- Q.7** Should a local authority itself be able to authorise exemptions? If so, should such decisions be made at executive or member level? If authorities were empowered to make such decisions, what safeguards should there be to ensure that standards are maintained? Would the Independent Adjudicator have any role in this? (para 3.5)
- Q.8** Could the adjudication role, or a similar one created in the light of the response to this consultation, be performed by a non-departmental body such as the Standards Board for England? (para 3.6)

Political assistants

- Q.9 Should political groups contribute to the salary of their assistants (to mirror the system used for political assistants to MPs)? (para 4.9)**
- Q.10 Should pay continue to be regulated directly by Government and Parliament? If not, what safeguards should be implemented? Should the method of amending political assistants' pay be changed? If so should assistants pay be set by local authorities: or linked to the National Joint Council's Scale? If the latter, at what point? Would a range be more appropriate? (para 4.8)**
- Q.11 Should the rules governing Mayoral political assistants be brought in line with those for local authorities – or vice versa? (para 4.11)**
- Q.12 Should the constraints on the political activities of political assistants now be varied? If so, in what way? (para 4.10)**

Employees as elected members

- Q.13 Is it desirable to increase or decrease the number of paid hours given to an employee to function as a councillor in another authority? If so, what should the new limit be? (para 5.2)**
- Q.14 Should the current rules prohibiting councillors from being officers of the same authority be revised or deleted, or are they necessary to ensure that members are not allowed to make decisions which impact on their own employment? (para 5.5)**

ANNEX A

Summary of questions posed

- Q.1 Is the Government right to exclude teachers, firefighters and community support officers? (paras 3.2, 3.3)
- Q.2 Are there other categories of employee who should not be subject to the employees' code, for example, school support staff? If so, which categories, and why should they be excluded? (para 3.2)
- Q.3 Do you agree that council managers should be subject to the same code as other employees? (paras 3.5-3.7)
- Q.4 Should different rules, or a separate Code, apply to political assistants? (paras 3.8 3.9)
- Q.5 Are the provisions relating to the use of public funds and property adequate to ensure effective stewardship of resources? (para 4 of Section 4)
- Q.6 Is it appropriate for the code to impact on an employee's private life or should it only apply to an employee at work? (para 5 of Section 4)
- Q.7 As with the members' code, should there be a standard list of interests and/or hospitality/benefits/gifts that must always be registered? (para 6 of Section 4)
- Q.8 If so, what should the list contain? Should it mirror part 3 of the councillors' code or be restricted to financial interests? (para 6 of Section 4)
- Q.9 Should such a list be available to the public? (para 6 of Section 4)
- Q.10 Alternatively, could the need for a list be restricted to officers above a certain salary, as applies, for example, to the current political restrictions regime? (para 6 of Section 4)
- Q.11 Should this provision be explicitly limited to interests, gifts etc, that may have a bearing on the way in which the functions of the authority are discharged by the employee? (para 6 of Section 4)
- Q.12 Does the proposal on the reporting of misconduct provide suitable protection for employees? (para 7 of Section 4)
- Q.13 Should the Code impose a duty on employees to report misconduct? (para 7 of Section 4)
- Q.14 Is 'friend' the appropriate term to use in the draft code? If so, should it be defined, and what should the definition be? (for example, a person with whom the employee spends recreational time outside the work environment, or actively shares a mutual interest?) (para 9 of Section 4)

Q.15 Does the phrase 'relative or friend' as defined above adequately cover all the relationships with which this part of the code should be concerned? (para 9 of Section 4)

Q.16 Do you have any comments on what arrangements might be appropriate for ensuring employees are informed about the code? (paras 5.2 and 5.3)

Draft Model Code of Conduct for Local Authority Employees

(Responses to questions in Annex A of the Consultation Document)

Q1 Yes -for the reasons given

Q2 Yes. The over-arching test for inclusion should be whether the employee by virtue of their official position is - or could reasonably be perceived as being - in a position to influence Local Authority decisions and/or to make personal gain from that position. Those not falling into this category should be excluded.

Q3 Yes - for the reasons given.

Q4 No - for the reasons given.

Q5 Yes - but suggest that 4(b) of the code be expanded to "not make personal use **or permit others to make personal use** of property or facilities....."

Q6 Yes - for the reasons given.

Q7 Yes - there is a need to expand what is meant by -for example- "hospitality" but it is impossible to produce an all embracing definition and employees should be advised that if in any doubt interests must be declared.

Q8 It should mirror Part 3 of the Councillor's code.

Q9 Yes

Q10 No. Salary is not the determinant factor. It is the nature of the post (at whatever level) that determines the potential influence.

Q11 No. It would be extremely difficult to differentiate between gifts etc that may or may not have a bearing on the way way in which the functions of the Authority are discharged by an employee. Again it is the perception of others that matters and which makes it safest to include all hospitality, gifts and benefits.

Q12 Yes

Q13 Yes

Q14 Impossible to come up with a definition that will be in no way ambiguous. The term "personal friend" may however differentiate between colleagues/contacts with whom one is on friendly terms and those who are in one's personal and limited "circle of friends".

Q15 Would like to see the phrase extended to include "outside business contacts" who could conceivably benefit from their links with Local Authority employees.

Q16 No



LEEDS

CITY COUNCIL

AGENDA
ITEM NO.: 11
Originator: Ella Anderson
Tel: 395 1632

REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

REPORT TO STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : CONSULTATION PAPERS ISSUED BY THE OFFICE OF THE DEPUTY PRIME MINISTER (ODPM)

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>

1 PURPOSE OF REPORT

1.1 To give further consideration to the response to the above consultation papers following consultation with Members of the Standards Committee.

2 BACKGROUND

2.1 Members will recall that at the last Standards Committee meeting on 28th September, two consultation papers received from the Office of the Deputy Prime Minister (ODPM) were tabled. Consideration was deferred in order that Committee Members' comments could be invited and discussed at the next meeting. The Office of the Deputy Prime Minister has agreed to extend the deadline of 19th November 2004 for the submission of responses.

2.2 The first paper, *A Model Code of Conduct for Local Government Employees* sought views on proposals for a code of conduct which would apply to employees in local government. A response was received from one Member of the Standards Committee. The summary of questions posed by the ODPM, and the Member's response to those questions, are attached as appendix A to this report for Members' consideration.

2.3 The second paper, *Review of the Regulatory Framework Governing the Political Activities of Local Government Employees* sought views on proposals arising from the current restrictions which apply to council employees' political activities and the current arrangements for the remuneration of political assistants. No comments were received from Committee Members prior to the preparation of this report. The summary of questions posed by the ODPM is attached for further consideration.

2.4 Copies of the full consultation documents were included in the Standards Committee papers for 28th September and are available to Members on request

3.0 RECOMMENDATION

- 3.1 The Committee is asked to consider the comments received following consultation with Committee Members and discuss the development of a response to the ODPM consultation papers.

NOTES OF A MEETING OF THE STANDARDS COMMITTEE INDEPENDENT MEMBERS' REGIONAL FORUM

26TH OCTOBER 2004

PRESENT:

Tony Alcock	- South Yorkshire Police Authority
Anne Beckett	- West Yorkshire Police Authority
Alan Carter	- South Yorkshire Police Authority/Passenger Transport Authority
Michael Chappell	- Bradford City Council
Brian Cottingham	- Hull City Council
James Daghish	- North Yorkshire County Council
David Edwards	- Hambleton District Council
Pam Essler	- Bradford City Council
Gillian Fleming	- North Yorkshire County Council
Tom Gillespie	- Wakefield Metropolitan District Council
Cheryl Grant	- Leeds City Council
David Hargreaves	- South Yorkshire Police Authority
Colin Kirby	- Calderdale Metropolitan Borough Council
Lynn Knowles	- Calderdale Metropolitan Borough Council
Alan Lawton	- North Yorkshire County Council/Teesside Business School
Roger McMeeking	- City of York Council
Phil Marshall	- West Yorkshire Fire and Civil Defence Authority
Peter Neale	- Richmond District Council
John Parker	- Leeds City Council
Keith Robinson	- Hull City Council
Andrew Smith	- Humberside Police Authority
Gilbert Stroud	- Humberside Police Authority
Very Reverend George Nairn-Briggs	- Wakefield Metropolitan District Council
Stephen Knight	- North Yorkshire County Council
Tony Stanley	- Rotherham Metropolitan Borough Council
Joyce Clarke	- Humberside Fire Authority
Ninda Randhawa	- South Yorkshire Police Authority & Rotherham Borough Council
Paul Matthews	- South Yorkshire Fire Authority & Rotherham Metropolitan Borough Council
Yvonne Rose	- Yorkshire Dales National Park Authority
Michael French	- Harrogate Borough Council
Geoff Badcock	- Harrogate Borough Council
Len Linking	- Harrogate Borough Council

IN ATTENDANCE:

David Laverick	- President, Adjudication Panel for England
Maira Beighton	- Legal Services, North Yorkshire County Council
Catherine Whitehead	- Monitoring Officer, North Yorkshire County Council
Jon Wimbush	- Constitution Support Officer, Leeds City Council
Ella Anderson	- Assistant Constitution Support Officer, Leeds City Council

1 Appointment of Chair

- 1.1 James Daghish was appointed to chair this meeting.

2 Welcome and Apologies for Absence

- 2.1 James Daghish welcomed all present to this meeting of Independent Members of Standards Committees in Yorkshire and Humberside.
- 2.2 The following apologies for absence were reported:

Christine Jackson - South Yorkshire Passenger Transport Authority
Raymond Booth – Doncaster Metropolitan Borough Council
Rt Reverend Tony Robinson – Barnsley Metropolitan Borough Council
Rt Reverend David Smith – North Yorkshire Moors National Parks Authority
Mike Wilkinson - Leeds City Council
Hendia Bevan - Richmond District Council
Gerald Burnett - Richmond District Council
Martin Shelton - Rotherham Metropolitan Borough Council

3 Minutes of the Previous Meeting

- 3.1 The minutes of the previous meeting held on 9th March 2004 were approved as a correct record.

4 The Adjudication Panel for England

- 4.1 The Chair introduced David Laverick, the President of the Adjudication Panel for England and informed members of Mr Laverick's background.
- 4.2 Mr Laverick told members that rather than address the forum purely on the work of the panel and its case tribunals in the determination of allegations of misconduct, he would talk about the interplay between Standards Committees and the Adjudication Panel.
- 4.3 The President reminded the forum that as a result of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations, which would come into force on 4th November 2004, Standards Committees would have to deal with many more allegations of misconduct, though the Standards Board will continue to examine more serious matters.
- 4.4 The Panel's target was to complete each case within sixteen weeks. Mr Laverick acknowledged that this time frame was wider than that for Standards Committees, but stressed that the bulk of this time was taken up when the matter was in the hands of parties other than the Panel. Account also had to be given to the fact that 28 days notice must be provided to Respondents when asked to attend a hearing.
- 4.5 The forum was informed that there had been very few hearings in the Yorkshire area.

- 4.6 Mr Laverick explained that the purpose of the Panel was to determine which issues were in dispute and how best to resolve them. An argument was often not over fact, but over the interpretation and application of that fact. This resulted in the Adjudication Panel concentrating on the arguments that needed to be heard, once the undisputed facts had been established.
- 4.7 One concern raised by Mr Laverick in relation to Standards Committees conducting investigations and hearings was that the people presenting the cases to panels would need to be adequately trained.
- 4.8 It was noted that if a Councillor appealed to the Panel in relation to a Standards Committee determination, that Committee can participate in the subsequent hearing. However, the panel did not encourage this, as the parties remained the appellant and the ESO. It was felt by the Panel that for a Standards Committee to be represented and participate would question their impartiality.
- 4.9 Mr Laverick reported that to date, there had been 11 appeals against the local determination of misconduct allegations. Several others have been refused the chance to appeal following consideration by the President. No decision of a local Standards Committee has yet been overruled.
- 4.10 All Adjudication Panel decisions were published on the Panel's website (www.adjudicationpanel.co.uk) and work was currently ongoing to improve the search engine facility.
- 4.11 Mr Laverick mentioned the possibility that conflicts of interest could arise for Monitoring Officers once the Regulations came into force. Though this has been addressed by allowing Monitoring Officers to investigate allegations or nominate a deputy, it was felt that it would only be after a period of time in operation that a clear picture would emerge of the recommended working arrangements.
- 4.12 Concern was raised over whether Councillors should accept that they were continuously in public life and behave accordingly, even when not conducting Council business. Mr Laverick responded to this by saying that there could be challenges to this under the Human Rights Act, in relation to the right to private life.
- 4.13 Some Members expressed concern over the weighting of written and oral evidence. Mr Laverick felt that if the facts were not in dispute, then the form in which the evidence was presented was irrelevant at a hearing.
- 4.14 Mr Laverick considered that the only really contentious issue at the moment seemed to be the lack of power to subpoena witnesses to hearings – this may be reviewed at a later date.
- 4.15 Mr Laverick responded to concerns that witnesses attending hearings could be 'browbeaten' by legal representatives by explaining that a Chair could intervene in such a situation, if s/he felt it necessary.

- 4.16 Forum members were advised that, in approximately 96% of cases, the alleged breach of the code of conduct, as submitted by the ESO was upheld. However, there had been one or two cases where the case has been deemed a 'technical' breach and no sanction was imposed.
- 4.17 It was noted that 34% of complaints received were referred by the Standards Board for investigation and about 10-15% of those found their way to the Panel. It was difficult to assess the level of consistency, as there was a pool of panellists and hence a number of possible different combinations.
- 4.18 In response to an independent member, Mr Laverick could not recall a case where a complaint had been made in relation to a fire authority.

The forum thanked Mr Laverick for his presentation and constructive advice on the conduct of hearings into misconduct allegations.

5 Proposed Terms of Reference for the Forum

- 5.1 The Forum considered draft terms of reference for the group, based on those used by Kent and Medway independent members forum. The purpose of this item was to formalise the forum arrangements and the report reflected the discussion held previously, which identified the forum as being a discussion group providing support to independent members, and not a decision making body.
- 5.2 It was suggested that at 2.01 of the report, the fifth bullet point should be amended to read, 'The group shall act as a focal point for communication between independent members of Yorkshire and Humber and the Standards Board for England' and the reference to this being a prime function of the group should be deleted.
- 5.3 The draft terms of reference were approved subject to the amendment as outlined above and the outcome of item 7.

6 Independent Member Fora Co-ordinators' Meeting

- 6.1 The minutes of a meeting of independent members co-ordinators, organised by the Standards Board and held on 7th July 2004 were provided for members' information.
- 6.2 No response had yet been received from the Standards Board in relation to the issue of independent members' indemnity and it was agreed that this would be followed up.
- 6.3 There was some discussion as to the exact nature of the relationship between these fora and the Standards Board for England. There was concern as to whether this forum would become a pressure group or an arm of the Standards Board. It was felt that some distance should be maintained between the two bodies, as it could lead to problems later, for example if the forum wanted to criticise the Board.

- 6.4 The concerns raised were to be brought to the attention of Mike Wilkinson, who, as the representative from this body at the co-ordinators' meeting, was considered best placed to voice these concerns.

7 Possible Expansion of the Regional Forum

- 7.1 Members considered a report regarding the proposed expansion of the regional forum to include independent representatives from Standards Committees in the Humber region, together with the possible inclusion of elected Standards Committee members in future forum meetings. The views of elected members of Leeds City Council's Standards Committee in support of the latter proposal were reported
- 7.2 The forum agreed unanimously to include independent members from the Humber region in future meetings.
- 7.3 There was some discussion on the proposal that elected members be involved in future forum meetings. Issues raised included; the need to avoid party politics affecting the business of the forum; the limited availability of elected members to attend meetings; the practicalities of such a big group – and the main concern over the perceived threat to the independence of the forum and its members -.
- 7.4 Three proposals were put to the vote:
1. Should elected members be included?
 2. Should elected members be completely excluded?
 3. Should elected members be excluded from meetings, but that the minutes be reported to each authority's Standards Committee
- 7.5 It was agreed that the forum should continue as an independent member only group, but that the minutes of all forum meetings be reported back to each authority's Standards Committee, to keep elected members informed. In reaching this decision, members stressed the need to retain their independence and political neutrality

8 Attendance at Other Authorities' Local Determination Hearings

- 8.1 The forum considered a report following consultation with Monitoring Officers over proposals to allow members from other Standards Committees to attend local determination hearings held in the region. It was reported that a number of authorities had not responded to the consultation, though several had expressed a willingness to participate.
- 8.2 Members raised various concerns over this proposition including; if Members did attend other authorities' hearings, they would not necessarily be observing best practice; the 'swamping' of small committees by large numbers of observers; the suggestion that everyone would be put ill at ease – both the respondents and also the members conducting the hearings.
- 8.3 It was agreed that participating authorities be asked to contact Jon Wimbush/Ella Anderson at Leeds City Council if they were about to hold a hearing, in order that the forum members could be notified, particularly those

members who may be required to Chair a hearing. It was felt that attendance could then be co-ordinated, to ensure that there wouldn't be an unreasonable number on any one occasion.

- 8.4 It was decided to have a standard item on future agendas to note issues arising at any local determination hearings and share experiences as hearings begin to take place.

9 Trivial/Vexatious Complaints of Misconduct

- 9.1 A report was presented for information detailing the views of Leeds City Council's Standards Committee elected members on the handling of trivial or vexatious complaints, to minimise the number of such complaints being referred to the Board. There was some discussion over the different methods employed by authorities to try and combat the number of trivial and vexatious complaints.
- 9.2 It was generally felt that the party Whip system could be harnessed to reduce the number of complaints of this type being referred to the Standards Board. However, this still left problems for those authorities (such as Parish Councils or National Park authorities) without party whip systems.
- 9.3 It was also felt important to offer advice and guidance to Chairs and Secretaries so that they in turn could advise members.
- 9.4 The forum found it useful to share concerns and ideas, especially as everyone had the same goal of reducing such complaints to the minimum number. It was agreed to note the report.

10 Annual Assembly of Standards Committees

- 10.1 Alan Carter had requested that this item be included here and gave the forum some feedback on the Assembly.
- 10.2 Any forum member who would like a copy of the full report that went to the Standards Committee Steering group was asked to contact Jon Wimbush/Ella Anderson. It was reported that Gillian Fleming would be on the Steering group for next year's Assembly from November and any ideas for items for future agendas should be forwarded to her.
- 10.3 It was noted that the next Annual Assembly would take place at the same venue next year on 17th & 18th October.
- 10.4 There was some criticism over the organisation and structure of the different workshops.
- 10.5 It was suggested that the Standards Board representatives had a pre-determined idea as to what they wanted the workshop outcomes to be.
- 10.6 Two new ongoing research projects were reported on the public view of Standards Committees and a general overview of the local government ethical framework.

11 Any Other Business

- 11.1 Members had previously received an invitation from the Greater Manchester independent members forum to attend a meeting of the forum in November at which Nick Raynsford (Minister for Local and Regional Government) was speaking. Members were reminded of the event and asked to inform Jon Wimbush if they wished to attend.
- 11.2 The Monitoring Officer from North Yorkshire County Council asked if there were any objections to the North Yorkshire Fire and Rescue Authority joining the forum - there were none. The Monitoring Officer also advised members that there was a vacancy for an independent member on this authority.

12.0 Date, Time and Venue for the Next Meeting

- 12.1 York offered to host the next meeting in March 2005. A choice of dates would be circulated in due course.
- 12.2 Wakefield had offered to host the meeting in October 2005.
- 12.3 Both authorities were thanked for their offers



AGENDA
ITEM NO.: 12
Originator: Ella Anderson
Tel: 0113 395 1632

REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

MEETING: STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : STANDARDS COMMITTEE INDEPENDENT MEMBERS FORUM

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>
Executive Board Decision <input type="checkbox"/>	Eligible for Call In <input type="checkbox"/>
	Not eligible for Call In (details contained in the report) <input type="checkbox"/>

1.0 INTRODUCTION

1.1 The Standards Committee Independent Members' Regional Forum (Yorkshire and Humberside) took place on 26th October 2004 in the Council Chamber, North Yorkshire County Council, Northallerton.

1.2 The minutes of the meeting are attached here for Members' information.

2.0 MATTERS FOR MEMBERS' ATTENTION

2.1 Members are asked to note item 7 – Possible Expansion of the Regional Forum. Independent Members voted not to include Elected Members in future meetings, but resolved that they should receive minutes of meetings and feedback from their own Independent Members.

2.2 Independent Members wished to stress that the reason for voting in this manner, was to safeguard the independent aspect of the forum and to ensure that it remained an apolitical body.

2.3 Members attention is also drawn to item 9, where Independent Members discussed the different methods employed by authorities to try and combat the number of trivial and vexatious complaints referred to the Standards Board.

2.4 It was generally felt that the party Whip system could be harnessed to reduce the number of complaints of this type being referred to the Standards Board. However, it was acknowledge that this still left problems for those authorities (such as Parish Councils or National Park authorities) without party whip systems.

2.5 Independent Members also felt it was important to offer advice and guidance to Chairs and Secretaries so that they in turn could advise Members.

3.0 RECOMMENDATION

3.1 Members are requested to note the minutes of the Regional Forum.



REPORT OF: THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
COMMITTEE: SCRUTINY BOARD CENTRAL AND CORPORATE FUNCTIONS
DATE : 5 OCTOBER 2004

SUBJECT : ROLE OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES AS MONITORING OFFICER

Electoral Wards Affected :	Specific Implications For :
All	Ethnic Minorities <input type="checkbox"/> Women <input type="checkbox"/> Disabled People <input type="checkbox"/>

1. INTRODUCTION

1.1 This Report sets out the role of the Director of Legal and Democratic Services as Monitoring Officer in response to a request from the Scrutiny Board.

2. THE ROLE OF MONITORING OFFICER

- 2.1 The requirement for each principal council to appoint a monitoring officer was introduced for the first time by the Local Government and Housing Act 1989 which provides at Section 5 that it **'shall be the duty of every relevant authority to designate one of their officers to be known as the monitoring officer'**.
- 2.2 That legislation reflected the government's reaction to the Widdicombe Committee's report on the Conduct of Local Authority Business.
- 2.3 The LGHA 1989, s5 (7) places a duty on the monitoring officer to appoint a deputy to act when the monitoring officer is unable to do so through absence or illness.
- 2.4 There are no statutory requirements as to who may be designated monitoring officer save that it cannot be the Head of Paid Service, nor can it be the Chief Finance Officer as appointed under s151 of the Local Government Act 1972.
- 2.5 There are no requirements for the Monitoring Officer to have any formal qualification, although in practice a large majority of Monitoring Officers are lawyers and usually the most senior lawyer employed by the authority. Certainly the appointment of the Monitoring Officer (which is not a function of the Executive under new Constitutions) needs to be considered with care. As the Association of County Secretaries and Solicitors point out. 'The personal duty to the Council, the need for impartial and independent judgement often in the face of political pressure require many attributes

including analysis, resolution, consistency and steadfastness'. Those comments are borne out by the recent research conducted on behalf of the Standards Board (see Appendix A for a copy of a preliminary presentation of that research). The Monitoring Officer will need to command the confidence and respect of both Officers and Members.

- 2.6 The Standards Board for England may issue guidance in relation to the qualifications or experience which Monitoring Officers should possess and commentators have suggested 'it would be surprising if guidance did not emphasise the desirability of a legal qualification and substantial experience in constitutional issues affecting local government.
- 2.7 The research conducted on behalf of the Standards Board shows, amongst other things, that the role of Monitoring Officer is not a full – time post.
- 2.8 Article 12 of the Constitution provides that the role of Monitoring Officer within Leeds City Council will be carried out by the Director of Legal and Democratic Services. The Chief Legal Services Officer is designated as Deputy Monitoring Officer

3. THE FUNCTIONS OF THE MONITORING OFFICER

- 3.1 The Council has adopted a Monitoring Officer Protocol which is contained in Part 5 of the Council's Constitution and which is reproduced at Appendix B for ease of reference. That protocol contains an appendix summarising the current responsibilities of the Monitoring Officer and provides some general information on how the statutory requirements of the Monitoring Officer will be discharged.
- 3.2 The main duties of the Monitoring Officer are also set out in Appendix B.
- 3.3 In addition regulations made under the Local Government Act 2000 enabling ethical standards officers to refer allegations that a member has breached the Code of Conduct to monitoring officers for local investigation will soon be in force.

4. SOME AREAS OF POSSIBLE CONFLICT

- 4.1 The Standards Board advise that Monitoring Officers play an important role in advising their members on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the Standards Committee at a later stage. However conflicts are not likely to arise simply from informal discussions between Members and monitoring officers.
- 4.2 Monitoring Officers therefore need to be aware of the potential conflicts involved in advising the Standards Committee and advising Members. It is important that Standards Committees receive high quality, independent advice. For that reason the Standards Board recommend that a Monitoring Officer should be the main advisor to the Standards Committee, unless they have an interest in the matter that would prevent them from performing this role independently. If that situation should arise a Monitoring officer should arrange for another appropriately qualified officer to advise the Standards committee.
- 4.3 Under the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003, Ethical Standards Officers can refer completed investigation reports to monitoring officers for Standards Committees to determine whether or not a Member

has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.

- 4.4.1 When an ESO refers a matter to the Monitoring Officer of the relevant authority, the monitoring Officer must arrange for the authority's Standards Committee to consider the ESO's report and determine the matter.
- 4.4.2 The Local Government Act 2003 amends the statutory provisions relating to monitoring officers specifically enabling them to delegate any of their functions which arise on receipt of a reference from an ethical standards officer under Part III of the local Government Act 2000. A monitoring officer who considers s/he ought not to perform particular functions may nominate another person to do so. That person may be an officer employed by the Council or someone outside the Council. Where the monitoring officer's deputy is acting in his absence or illness, the deputy has similar powers.
- 4.4.3 The provision enabling delegation will enable a monitoring officer to ensure that where she has a conflict of interest, by nominating a colleague or a person externally to carry out an investigation advice to the Standards Committee will be seen to be impartial. The monitoring officer has a complete discretion in the nomination of another person and there could well be other reasons apart from conflict as to why s/he should not act personally.
- 4.4.4 In advising the Standards Committee, the Monitoring Officer or other legal advisor's role is to:
- make sure that members of the Standards Committee understand their powers and procedures
 - make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible
 - make sure that the Member against whom the allegation has been made understands the procedures the Standards committee will follow
 - provide advice to the Standards Committee during the hearing and their deliberations; and
 - help the Standards committee produce a written decision and a summary of that decision.
- 4.4.5 The Board recommend that monitoring officers consider options for reducing the likelihood of such conflicts, including:
- Arranging for another officer to advise members; or
 - Continuing to advise members, identifying possible scenarios that may lead to future conflicts and reassuring themselves that if their advice could be material to an investigation, they have another appropriately experienced officer who is prepared to support the Standards Committee in its hearings and deliberations.
- 4.5 The Local Government Act 2000 enables ethical standards officers to refer allegations that a member has breached the Code of Conduct to monitoring officers for local investigation. An ethical standards officer may refer an allegation for local investigation at any point before they complete an investigation into the allegation. There are soon to be issued The Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 detailing how these investigations are to be conducted together with guidance from the Standards Board on the Regulations.

4.5.1 The draft guidance issued by the Standards Board, for consultation, restates the roles which the Monitoring Officer has in relation to the Code of Conduct, namely to:

- provide advice to the Standards Committee
- advise Members who are the subject of an allegation and the person making the allegation
- investigate alleged breaches of the Code of Conduct that an ethical standards officer has referred for local determination (this is a statutory role that can be delegated)
- advise members about conduct issues before any alleged misconduct takes place

4.5.2 Each role is important but may lead to a conflict of interest in relation to an investigation. For example, if the Monitoring Officer is asked to investigate an allegation against a Member to whom they have previously given advice on the same issue, then it is likely that a conflict of interest would arise. Where a matter is referred back for local investigation, it is still vital that the Standards Committee has access to appropriate advice. The monitoring officer needs to consider whether they wish to investigate the matter and delegate the role of advising the Standards Committee or if it is more important to delegate the investigative role. The Guidance also cautions that care is needed to avoid personal conflicts of interest. If the Monitoring officer finds that they have a direct or indirect interest in a local investigation (for example a direct financial interest in the subject of the allegation, or know that a family member or friend is involved), they must not participate

5. WHO MONITORS THE MONITORING OFFICER ?

5.1 The Local Authorities (Standing Orders)(England) Regulations 2001, reg 6 required Councils to adopt new standing orders in relation to disciplinary action against monitoring officers. In effect the Regulations require the Council to appoint an independent person to investigate allegations of misconduct by the monitoring officer, and, save for suspension on full pay for up to two months, the Council may only take disciplinary action as recommended by the independent person.

5.2 The exercise of the duties of the monitoring officer are capable of judicial review

5.3 The local government auditor is concerned with scrutinising the activities of a local authority on three different levels:-

- first, he is concerned with the authority's accounting practices
- secondly, he is concerned with the authority's arrangements for achieving value for money
- and thirdly, he is concerned with the legality of the authority's items of expenditure

5.4 It is through his examination of the legality of an authority's decisions that the auditor acts as watchdog against ultra vires expenditure by local government.

5.5 Once he has embarked upon the audit of a public body, the auditor must consider whether, in the public interest, he should make a report on any matter coming to his

notice in the course of an audit in order that it may be considered by the body concerned or brought to the attention of the public

- 5.6 Although the Adjudication Panel has no jurisdiction over officers it can, as in the recent case of Knutsford Town and Macclesfield Borough Council, make recommendations highlighting shortcomings in the performance of Monitoring Officers.
- 5.7 The Monitoring Officer submits annual reports to the Standards Committee on the carrying out of her functions.



REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

MEETING: STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : ROLE OF THE MONITORING OFFICER – REPORT TO SCRUTINY BOARD

Electoral Wards Affected :	Specific Implications For : Ethnic Minorities <input type="checkbox"/> Women <input type="checkbox"/> Disabled People <input type="checkbox"/>
Executive Board Decision <input type="checkbox"/>	Eligible for Call In <input type="checkbox"/> Not eligible for Call In (details contained in the report) <input type="checkbox"/>

1.0 PURPOSE

1.1 To advise Members of consideration by a Scrutiny Board of the role of the Monitoring Officer, and that Scrutiny Board’s resolution to raise concerns with the Standards Board for England.

2.0 BACKGROUND INFORMATION

2.1 On 5 October 2004, Scrutiny Board (Central and Corporate Functions) considered a report setting out the role of the Director of Legal and Democratic Services as Monitoring Officer.

2.2 The report is attached as appendix 1 to this report, for Members’ information.

3.0 CONCERNS RAISED BY THE SCRUTINY BOARD

3.1 Nicole Jackson, Director of Legal and Democratic Services, was at the Scrutiny Board meeting on 5th October 2004 and responded to Members’ questions and comments.

In summary, the main points made by Members were as follows:

- concern was expressed that cases where Members are the subject of an allegation are publicised before the Standards Board before the case is proven;
- the detrimental effect this can have on individuals;
- the length of time taken to bring such cases to a conclusion needed to be shortened;

- that there was a potential conflict of interest in that the Monitoring Officer is required to give advice to both Members and the Standards Committee, and could be called as a witness in any investigation.

The Scrutiny Board resolved to note the contents of the report and to pass their comments to the Standards Board for England.

4.0 RECOMMENDATION

- 4.1 Members are requested to note the report, and the resolution of the Scrutiny Board.



REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

REPORT TO STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : AMENDMENT TO MONITORING OFFICER PROTOCOL

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/> Women <input type="checkbox"/> Disabled People <input type="checkbox"/>
Executive Board Decision <input type="checkbox"/>	Eligible for Call In <input type="checkbox"/>
	Not eligible for Call In (details contained in the report) <input type="checkbox"/>

1.0 PURPOSE OF REPORT

1.1 To seek Members' approval for an amendment to the Monitoring Officer Protocol, to add a reference to the Monitoring Officer's role in relation to Ombudsman Complaints.

2.0 BACKGROUND INFORMATION

- 2.1 The Local Government Ombudsman investigates complaints of injustice arising from maladministration by local authorities and certain other bodies.
- 2.2 The Local Government Act 1974 and the Local Government and Housing Act 1989 make provision in relation to the Council's obligations following the involvement of the Local Commissioner.
- 2.3 Legislation imposes a duty upon Monitoring Officers to submit a report to Council should the Local Commissioner find maladministration, whether or not injustice has been caused by that maladministration.
- 2..4 The Monitoring Officer Protocol currently has no reference to the role of the Monitoring Officer in relation to Ombudsman complaints.

3.0 PROPOSED AMENDMENT

3.1 It is proposed that the paragraph below be added to the Monitoring Officer Protocol to reflect the role of the Monitoring Officer in Ombudsman Complaints:

"2.2.4 Ombudsman Complaints

- (a) prepare reports as required by the Local Government Act 1974 and the Local Government and Housing Act 1989 in relation to complaints which have been the subject of investigation by the Local Government Ombudsman and which have revealed maladministration whether or not that maladministration has caused injustice.

- (b) prepare reports to Members where considered necessary to bring to their attention issues of importance arising out of complaints made to the Local Government Ombudsman whether or not investigated or maladministration found."

4.0 RECOMMENDATION

- 4.1 Members are requested to note this report and approve the amendment set out in paragraph 3.1 above.



REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

MEETING: STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : THE ADJUDICATION PANEL FOR ENGLAND : DECISIONS OF CASE TRIBUNALS

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>

1.0 BACKGROUND

- 1.1 At the meeting on 3rd April 2003, Members received a report setting out the background to the establishment of the Adjudication Panel for England and the role of its case tribunals in determining allegations of misconduct
- 1.2 Members asked that decisions of the case tribunals be notified to the committee periodically. A summary of the decisions recently posted on the adjudication panel's website is attached as an appendix to this report. Further details of specific cases are available at www.adjudicationpanel.co.uk

2.0 CASE TRIBUNAL DECISIONS AND LESSONS TO BE LEARNED

- 2.1 Twelve case tribunal decisions have been published since the last report. The decisions are summarised below in order that Members may consider if there are any lessons to be learned by this authority. Copies of each case summary published on the Adjudication Panel for England's website have been sent separately to Members.
- 2.2 The committee will note that the majority of cases highlight the need for comprehensive and regular training for elected and co-opted Members on the detailed requirements of the code of conduct. This remains an important part of the Member development strategy and timetable. Several of the cases highlighted in these reports would serve as useful examples of the consequences of misconduct, for use in the training sessions arranged for Members. Members should note that detailed briefing sessions on the requirements of the code of conduct have been held with newly elected members of Council as part of the overall induction arrangements.

2.3 Blidworth Parish Council

The allegation in this case was that the Member in question had disclosed confidential information and used his position improperly in order to confer an advantage on the former Parish Clerk. It was also alleged that he had brought his office into disrepute by attempting to tape record a confidential discussion at a Council meeting.

The Member argued that there was no document forbidding the recording of meetings.

The case tribunal took into account that the unauthorised disclosure was not limited to one occasion and that there were no mitigating circumstances. They also felt that he had abused his position as a Councillor on a wilful, deliberate and sustained basis. The Member was disqualified for the period of one year.

2.4 Peterborough City Council

The allegation was that the Leader of the Council had failed to treat others with respect and had brought his office into disrepute. It was alleged that he had composed hand-written notes and conducted a number of telephone calls in which he used offensive and insulting language.

Following the appearance of the Leader's comments in the press, the Council removed the Member from the office of Leader.

The case tribunal disqualified the Member for the period of two years.

2.5 North Petherton Town Council

The Member was accused of failing to adequately specify his interests in relation to land following his re-election. The Member stated that he felt the necessity to register such details was unnecessary and he was against such intrusion.

The Member was disqualified for the period of one year.

2.6 Burnley Borough Council

In this case, a (now former) Councillor was alleged to have brought the authority into disrepute by his involvement in a violent fight at a public event. The police were not informed of the incident.

The case tribunal took into account paragraphs 8 and 10 of the General Principles on which the Code of Conduct is based. They also considered the fact that there had been a separate violent incident involving the Member the night before.

Also, although the Member had resigned, the tribunal felt that he had shown no remorse and there was no indication that such behaviour would not be repeated. In addition, the Member had failed to co-operate with the Ethical Standards Officer's (ESO) investigation or the Adjudication Panel for England.

The Respondent was disqualified for three years.

2.7 Sidmouth Town Council

The allegation was that the Councillor had failed to treat others with respect, that he had attempted to compromise the impartiality of those working for the authority and that he had conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

The matter in question related to an unofficial policy that had been in existence for at least eighteen years, of Council employees opening all mail received at the Council's address. The Member made a complaint to the Police over the opening of his mail and later submitted a complaint against the police officer who conducted the investigation.

The Council resolved to deny the Member access to the Council building, other than for meetings or previously arranged meetings.

The case tribunal did not find that the Councillor had attempted to compromise the impartiality of another and did not find that the Member had conducted himself in a manner that might bring the authority into disrepute. They did find however, that he had failed to treat others with respect.

The case tribunal decided that no further action was needed. In reaching this decision, they took into account the fact that the Councillor had made an unconditional apology and that the Council was maintaining its own measures to ensure only restricted access to Council resources.

2.8 Halstead Parish Council

A number of allegations were made against the Member in this case:

- a personal interest was not properly disclosed
- failure to withdraw from a meeting when a prejudicial interest existed
- making derogatory remarks
- making false statements and by so doing attempting to use his position improperly to confer a (dis)advantage
- compromising the impartiality of the Parish clerk
- preventing another from gaining information
- by each of the above, bringing the office/authority into disrepute

The case tribunal did not find that the Member had improperly conferred a (dis)advantage or had prevented a person from gaining information. It also found no evidence of the latter four allegations. The Member was suspended from participation in all business of the authority for the period of six months.

The tribunal made a recommendation to the authority that before the end of the suspension period, the Respondent should have further training on the interpretation of the Code of Conduct and that this training should also be offered to other Councillors.

2.9 Sheringham Town Council

The Member in question was alleged to have failed to declare a personal interest, as well as bringing the authority into disrepute by withholding information from Councillors so that their capacity to make a sound decision was impaired.

The complaint centred around a briefing note prepared by the Respondent in which he summarised the Code of Conduct. This summary was inaccurate but the Respondent failed to admit to this. The Councillor was reprimanded for his failure to follow the Code and in particular, his failure to correct his error. However, it was decided that no further action was necessary.

A recommendation was made to the authority that it review in conjunction with the Monitoring Officer, the content and operation of its complaints procedure and consider the need for further training of Councillors in relation to their obligations under the Code.

2.10 Birmingham City Council

It was alleged that a Member allowed a journalist to read a confidential Cabinet report, which led to the publication of an article containing that confidential information.

The Member explained that this was a 'test' case, in that he intentionally broke the Code of Conduct in order to determine its extent. He later said that there had been no contravention as the information should not have been classified as confidential.

The Respondent submitted that no detriment had been caused, that the Code had been introduced without sufficient debate and that he had reported himself to the Standards Board. The case tribunal found that it was not necessary to disqualify, suspend or partially suspend the Member and considered that a finding that he had acted in breach of the Code was sufficient.

2.11 Wyre Borough Council

The allegation in this case was that a Member had failed to disclose a personal interest, had failed to withdraw from a meeting when a prejudicial interest existed, had sought to improperly influence a decision in which he had a prejudicial interest and had brought his office/authority into disrepute.

The matter centred around the fact that the Leader of the Council had represented an individual before the Council's licensing committee in his professional capacity as a solicitor.

The case tribunal felt that there were mitigating circumstances including no improper motive and that the scope of paragraph 12 (1)(a) and the ability of Members to act in different capacities were not clearly established.

The tribunal considered that the Member had an unblemished record of service to the Council and that there was no training provided on the Code for Members. However, as an experienced Councillor, they felt that he should have known better. The Respondent was suspended for the period of six months.

2.12 Beaconsfield Town Council and South Buckinghamshire District Council

The allegation was that a Councillor had built on land before planning consent had been granted and therefore brought the authority into disrepute. The complaint was made by a political opponent whom the Respondent had defeated at election.

The authority's Monitoring Officer did not feel the Respondent had abused his position or brought the authority into disrepute.

The case tribunal recommended that planning officials should not exercise delegated powers to issue either planning permissions or planning advice to applicants who were Councillors and that all Councillors should receive appropriate guidance and instruction. They also felt that if as a result, Councillors would have to pay fees that otherwise would not be payable, these should be waived.

2.13 Adur District Council

An allegation was made that a Member failed to withdraw from a meeting when he had a prejudicial interest, arising from the consideration of his planning application, and that he remained in the public gallery whilst the application was considered, thus making other Members feel coerced and harassed.

The Councillor argued that the interest was not prejudicial, that as he was not a member of the panel and could not vote on the matter, he was there in a personal capacity.

Legal advice was given to the Member, but was rejected. The Respondent claimed that he had been victim to inaccurate advice from the officer concerned in the past. The ESO felt that the advice offered was correct.

As the Respondent was no longer a member of the authority, it was felt that a disqualification was necessary, the period of which was determined to be one year.

2.14 Wokingham District Council

The Member was accused of bringing the authority into disrepute due to his being charged with possessing and making indecent pseudo photographs of children.

The Councillor resigned and pleaded guilty in court. During the trial, it was found that at least one offence admitted to by the Respondent had taken place after the Council had adopted the Code of Conduct.

The Respondent was disqualified for the period of time he would serve on the Sex Offenders Register – 27/10/04 until 24/3/09.

3.0 RECENT COURT DECISION RELATING TO AN APPEAL AGAINST A CASE TRIBUNAL'S DECISION

3.1 On 28th October 2004, The Queens Bench Division heard an appeal against the findings and decision of the Adjudication Panel for England.

3.2 It was alleged that the Councillor had acted in breach of the Code of Conduct in that he had wrongly participated in the proceedings of the local authority's planning committee when it refused planning permission for a large scale development. Following referral to the Standards Board the Councillor had been suspended for one year..

3.3 The Court found that the tribunal had been right to find that a personal interest existed because it was likely to affect his 'well-being', which was a phrase meant to be broadly interpreted in light of the aim of the paragraph on preventing councillors from misusing their position for their own personal interests..

- 3.4 The Court also found that the Councillor's Human Rights had not been infringed as there had been no prying into M's private life in breach of Article 8. M's freedom of expression under Article 10 was not infringed by the provisions of the code.
- 3.5 However, the Court did feel that the tribunal had not given sufficient weight to the unusual features of the case. The Court found that the sanction was disproportionate and therefore reduced the suspension from one year to four months.
- 3.6 A more detailed summary is attached at the rear of the Adjudication Panel decisions, sent separately to Members

4.00 RECOMMENDATION

- 4.1 Members are asked to note the latest decisions of the Adjudication Panel's case tribunals, together with the appeal decision referred to in paragraph 3.0, and consider if there are any lessons to be learned for Leeds

Relevant Authority Concerned	Date of Hearing	Nature of Allegation	Case Tribunal Decision
Blidworth Parish Council	1 September 2004	Disclosing confidential information, using position to confer an advantage and bringing office into disrepute by attempting to tape record a confidential discussion at a meeting of Full Council	Respondent disqualified for one year
Peterborough City Council	7 th September 2004	Failure to treat others with respect and bringing office/authority into disrepute	Respondent disqualified for two years
North Petherton Town Council	8 th September 2004	Failure to adequately specify interests relating to land following re-election	Respondent disqualified for one year
Burnley Borough Council	16 th September 2004	Bringing authority into disrepute	Respondent disqualified for three years
Sidmouth Town Council	21 September 2004	Failure to treat others with respect, attempt to compromise the impartiality of those working for the authority and conducting self in manner that could reasonably be regarded as bringing office/authority into disrepute.	No further action needed
Halstead Parish Council	27 September 2004	Failure to comply with Code of Conduct – seven allegations	Respondent suspended from participation in all Council business for six months. Also recommendation to authority
Sheringham Town Council	7 October 2004	Failure to declare personal interest and bringing the authority into disrepute by withholding information from Members	Reprimanded, but no further action needed. Also recommendation to authority
Birmingham City Council	13 th October 2004	Allowing journalist to read confidential cabinet report	Not necessary to take action – finding of breach sufficient
Wyre Borough Council	14 th October 2004	Failure to declare personal interest withdraw from a meeting when prejudicial interest, seeking to improperly influence a decision and bringing office/authority into disrepute	Respondent suspended for six months

Beaconsfield Town Council and South Buckinghamshire District Council	21 October 2004	Bringing authority into disrepute by building on land before planning consent was granted	Recommendation to authority only
Adur District Council	21 October 2004	Failure to withdraw when had prejudicial interest and remaining in public gallery while own planning application being considered therefore making Members feel coerced and harassed	Respondent disqualified for one year
Wokingham District Council	21 October 2004	Bringing office or authority into disrepute	Respondent disqualified until 24 March 2009



REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

REPORT TO STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

**SUBJECT : COMPLAINTS REFERRED TO THE STANDARDS BOARD IN THE PERIOD
APRIL 2004 TO SEPTEMBER 2004**

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>

1.0 PURPOSE

- 1.1 This report advises Members about the number of complaints referred to the Standards Board for England regarding Leeds City Council and local Parish Councils within the authority, under the Members' Code of Conduct and the outcome of those complaints, in the period April 2004 to September 2004.
- 1.2 At its meeting on 27th April 2004, the Standards Committee asked for such information be provided to Members every six months.

2.0 OUTCOME OF COMPLAINTS

2.1 Parish and Town Councillors

- 2.1.1 There has been one complaint referred to the Standards Board in relation to Parish or Town Councillors within the Leeds Metropolitan District.
- 2.1.2 No investigation was conducted as the alleged conduct took place prior to the individual becoming a Councillor and therefore was not within the remit of the Standards Board.

2.2 Leeds City Councillors

- 2.2.1 Four complainants submitted complaints to the Standards Board during the period April 2004-September 2004 in relation to Leeds City Councillors. Two of these complainants made identical complaints. In total, eleven Councillors were alleged to have breached the code.

Outcome of complaint	Number of complaints
No investigation as no breach identified in complaint	2 (re 9 Cllrs)
No investigation due to insufficient information	2 (re 2 Cllrs)

3.0 SUMMARY OF COMPLAINTS

- 3.1 A Leeds City Councillor alleged that six fellow Members had used the authority's resources for party political purposes. Taking the circumstances and evidence into account, it was found that the alleged conduct, even if it had occurred, would not have constituted a breach.
- 3.2 Two individuals made a complaint against two Councillors regarding their conduct in the Council chamber. The Standards Board felt there was insufficient evidence to make a decision as to whether to refer the complaint.
- 3.3 One individual made complaints against three Members for failing to return telephone calls or deal with a complaint against another party. The Board felt it difficult to see how the facts alleged could amount to a failure to comply, on the part of any of the Members.
- 3.4 The complaints were made under the following paragraphs of the Code of Conduct:-
- 2(a) - the requirement to promote equality by not discriminating unlawfully against any person;
 - 2(b) - the requirement to treat others with respect;
 - 4 - the requirement that a Member does not conduct him/herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute;
 - 5 (b) - the requirement that a member uses the Authority's resources appropriately.

4.0 NATIONAL STATISTICS

- 4.1 National statistics show that:
- 3566 complaints were received in the financial year 2003/04
 - In the first six months of the financial year 2004/05, 1825 complaints had been received
 - About half of all complaints relate to Parish/Town Councils (April-Sept 2004) – *only one complaint in Leeds related to a Parish Council*
 - About one in four allegations are referred for investigation (April-Sept 2004) – *none of the allegations in Leeds were referred for investigation (two on the basis of insufficient information to make a decision to refer or not)*

- One in ten complaints is referred to the Adjudication Panel for England (April-Sept 2004) – *none of the complaints investigated in Leeds were referred*

5.0 FUTURE TRAINING

- 5.1 The Director of Legal and Democratic Services will seek to highlight in training those paragraphs of the Code in relation to which complaints have been made.

6.0 RECOMMENDATION

- 6.1 Members are requested to note the contents of this report.



LEEDS

CITY COUNCIL

<p>AGENDA</p> <p>ITEM NO.: 17</p> <hr/> <p>Originator: Liz Davenport</p> <p>Tel: 247 8408</p>
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REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

REPORT TO STANDARDS COMMITTEE

DATE : 25TH NOVEMBER 2004

SUBJECT : BRIEFING NOTE FOR MEMBERS - INVOLVEMENT IN COMMERCIAL TRANSACTIONS

Electoral Wards Affected :	Specific Implications For :
	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>

1 PURPOSE

1.1 To inform Members that guidance for elected Members involved in commercial transactions has been received and noted without additional comment by the Member Management Committee (MMC) and is now being prepared for publication on the intranet.

2 BACKGROUND

- 2.1 Members will be aware of the publication, within the Chief Executive’s Department area of the intranet, of a series of briefing notes intended to assist Members in fulfilling their roles within the Council.
- 2.2 The Standards Committee asked that a guidance note be prepared in relation to Members’ involvement in commercial transactions.
- 2.3 The briefing note was prepared for publication on the intranet, for Members’ guidance. A copy of this briefing note is attached as Appendix 1 to this report.

3 CONTENT

- 3.1 Members will note that the guidance deals with Members’ involvement in both procurement activities and land transactions.
- 3.2 The guidance advises Members about the issues of which they should be aware at all stages within the various processes involved and in each of the roles within which they may become involved in a commercial transaction.

4 MEMBER MANAGEMENT COMMITTEE

4.1 The Briefing note was presented to the Member Management Committee on 20 September 2004 and was received and noted without further comment.

5 RECOMMENDATION

5.1 The Committee is asked to note the contents of the briefing note, and that it has been noted by the Member Management Committee prior to its publication on the intranet.



**REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
 REPORT TO STANDARDS COMMITTEE**

DATE : 25TH NOVEMBER 2004

SUBJECT : PROTOCOL FOR COUNCIL/ALMO RELATIONS

Electoral Wards Affected :	Specific Implications For : Ethnic Minorities <input type="checkbox"/> Women <input type="checkbox"/> Disabled People <input type="checkbox"/>
Executive Board Decision <input type="checkbox"/>	Eligible for Call In <input type="checkbox"/>
Not eligible for Call In (details contained in the report) <input type="checkbox"/>	

1. PURPOSE OF REPORT

1.1 To get approval for a protocol for Council/ALMO relations.

2.0 BACKGROUND

2.1 The housing ALMOs, Leeds North West Homes Ltd, Leeds North East Homes Ltd, Leeds South Homes Ltd, Leeds West Homes Ltd, Leeds East Homes Ltd, and Leeds South East Homes Ltd, became formally responsible for a large number of the Council's housing management functions as from 1.2.03.

2.2 The Council still retains its strategic role as local housing authority, and sets key policies.

2.3 The creation of the ALMOs has raised issues about the distinction between their role and the Council's role, board appointments, the implications for Members of being an ALMO director, accessibility and transparency, and how the formal relationship between the Council and the ALMOs is governed.

3.0 PROTOCOL

3.1 It is proposed that the issues mentioned above are clarified in a formal protocol, for inclusion in Part 5 of the Constitution. This approach was adopted in relation to Education Leeds, and resulted in the Protocol for Elected Members/Education Leeds Relations.

3.2 A draft protocol is appended to this report.

3.3 Whilst the ALMO Chief Officers have been consulted about the draft protocol, it has not yet been put to the ALMO boards for approval. Once this has taken place, if there are further items which need to be added, a revised version of the protocol will be brought before the Standards Committee.

4.0 RECOMMENDATION

4.1 To approve the draft protocol appended to this report.

4.2 Officers to ask the ALMOs to put the protocol to their boards for approval, and if necessary bring a revised version of the protocol before the Standards Committee.

PROTOCOL FOR COUNCIL/ALMO RELATIONS

1. INTRODUCTION

- 1.1 The purpose of this protocol is to guide the Council's officers and Members, and ALMO officers and boards, in their relations with one another.
- 1.2 The protocol explains what the ALMOs are, and how their boards are appointed. It also explains the implications for Members if they are appointed to the boards, in relation to their role in Council business, and the formal rules governing how the boards operate.
- 1.3 It also outlines the different roles played by the Council and the ALMOs in delivering housing services, who decides what within the ALMOs, and the formal relations between the Council and the ALMOs, which are set out in more detail in the ALMO company documents, and the Management Agreements.

2. THE ALMOs AND THEIR BOARDS

2.1 The housing ALMOs

- Leeds North West Homes Ltd;
- Leeds North East Homes Ltd ;
- Leeds South Homes Ltd;
- Leeds West Homes Ltd ;
- Leeds East Homes Ltd; and
- Leeds South East Homes Ltd

became formally responsible for a large number of the Council's housing management functions, as from 1st Feb 03.

- 2.2 The ALMOs are companies limited by guarantee. The Council is the only member of the companies, and so the companies are "owned" by the Council. Their boards consist of Members, tenant representatives, and independents. There is a Management Agreement between the Council and each ALMO, regulating how the ALMOs carry out housing management functions, as the Council's agent. A large number of housing management staff have transferred their employment to the ALMOs. There has been no transfer of the housing stock, or housing land to the ALMOs.
- 2.3 There are different selection/election processes for each "group" on the board, although ultimately the Council as the only member of the company can remove any director, from whichever group. The selection/election processes were approved by Executive Board in July 2002.
- 2.4 The process for selecting Members for ALMO boards is now governed by the Appointments to Outside Bodies Procedure Rules. The ALMOs are categorised as Community and Local Engagement Bodies, and so the relevant Area Committees make these appointments. To complete the process, there needs to be a formal resolution of the company in general meeting to make the appointments (effectively, just the Council itself).

- 2.5 In the companies' Articles, the Council is committed to reviewing Member appointments from time to time, with an upper limit of 3 years. There is no legal requirement for political balance.
- 2.6 The tenants are elected (the ALMOs organise these elections), and the independents are selected by the rest of the board, following adverts. Again, there needs to be a formal resolution of the company as mentioned above.

3. IMPLICATIONS OF ALMO BOARD MEMBERSHIP

3.1 Executive Board Members

- 3.1.1 The Members' Code of Conduct, says that where a matter relates to a body to which a Member has been appointed or nominated by the Council as its representative, a member may regard him/her self as not having a "prejudicial interest" in that matter. "Prejudicial interest" means "one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest."
- 3.1.2 In the end then, it is for a Member on Executive Board to decide for themselves how the public might perceive their participation in those matters relating to ALMOs, which come up before Executive Board. Clearly, there could be differing views about whether a Member on Executive Board could be perceived as having a prejudicial interest in ALMO matters at Executive Board, if they were an ALMO director. Whilst one view might be that such a Member might show bias towards "their" ALMO, all Members have to balance their constituency role with their corporate role, and so the perception that such a Member would thereby be regarded as promoting their own Ward interests would arise just as much from their ordinary constituency role, as from their ALMO directorship. The Member must consider in relation to each separate agenda item which may affect ALMOs, whether they have a prejudicial interest.
- 3.1.3 It would be open of course to an Executive Board Member to take up a directorship, and then if particular items came to Executive Board where they thought they might be perceived as having a "prejudicial interest," they could exclude themselves from those items at Executive Board at that stage.
- 3.1.4 For example, if Executive Board were asked to approve the annual delivery plans for all the ALMOs, and prior to meeting, these had been agreed in principle between the ALMO Chief Officers and the Director of Neighbourhoods and Housing, the Member may decide they had no prejudicial interest. However, if Executive Board were being asked to sanction or penalise the Member's ALMO in some way, the Member might well take the view they could not take an entirely unbiased view of the wider public interest, and so decide they did have a prejudicial interest. Ultimately though, this is something for the Member to decide.

3.2 Scrutiny Board Members

- 3.2.1 As mentioned above, the Members' Code of Conduct says that a Member may regard themselves as not having a prejudicial interest in a matter, if it relates to a body to which they have been appointed or nominated by the Council as its representative (this would include appointment to an ALMO board). However, the Code also says that a Member on a Scrutiny Board must regard themselves as having a prejudicial interest in a matter, if it relates to a decision by another of the Council's committees, of which they are a Member. Although the ALMOs are separate legal entities and are not Council committees, they do act as the Council's agent in discharging housing management functions. By analogy, it is considered it would be very difficult to justify, if a Scrutiny Board Member did not regard themselves as having a prejudicial interest, if an issue relating to their own ALMO came up before the Scrutiny Board.
- 3.2.2 Again, this does not of course preclude a Scrutiny Board Member from taking up a directorship, however, the Member could not take part at Scrutiny Board where an issue from their particular ALMO was to be considered.

3.3 Other Members

- 3.3.1 When any Member acts as an ALMO director, they must still comply with the Members' Code of Conduct, unless that conflicts with the ALMO's legal obligations, in which case the latter must prevail.

3.4 ALMO Board Members' Code of Conduct

- 3.4.1 Each ALMO has adopted formally the Board Members' Code of Conduct. This is very similar to the Members' Code of Conduct, and covers such items as dealing with confidential information, promoting equalities, prohibiting personal advantage from ALMO business, and personal interests. In relation to interests, the issue could arise, whether, in relation to any particular matter which came up before an ALMO board, membership of the Executive Board or Scrutiny Board could give the board member an "interest" under the Board Members' Code of Conduct. The issue would be whether this meant they were getting "preferential treatment" or an improvement to their "well-being."
- 3.4.2 Clearly, if say an item came to the ALMO board, where it had already been to the Executive Board or Scrutiny Board as a confidential/exempt item, and the board member had taken part in those discussions, they could be in a "preferential" position when the item came to the ALMO board, in terms of how much they knew about the item. However, this does not mean they would be getting "preferential treatment" in a personal sense, and this is really what the Board Members' Code of Conduct aims to prevent.

- 3.4.3 By analogy with the Members' Code of Conduct, where a matter relates to a "public authority" in which a Member holds a position of general control or management (not as a representative of the Council), they may regard themselves as not having a prejudicial interest. Consequently, membership of Executive Board or Scrutiny Board does not automatically result in a board member having an interest. However, the board member needs to consider whether their involvement in a particular matter in those other capacities, could give them some sort of personal advantage (not just a better knowledge of the matter) when it comes before the ALMO board.
- 3.4.4 Similarly, being a Member does not mean an ALMO board member automatically has an interest in a particular item. Again, the question would be whether dealing with a matter in that capacity, meant they derived a personal advantage when it came up before the ALMO board.
- 3.4.5 Board members owe a fiduciary duty to their ALMO. This means they are in a position of trust, and must act in the best interests of the ALMO. Consequently, they must ensure that their role as a Member does not influence their decisions on ALMO matters, or restrict their contribution to discussions or decisions, in a way which is adverse to the general interests of the ALMO.

3.5 Access to Information

- 3.5.1 Each ALMO has adopted an Access to Information Protocol. This covers issues such as public and press access to reports, background papers, meetings etc.
- 3.5.2 The ALMOs are subject to the Freedom of Information Act 2000 as "publicly-owned companies," and when the individual right of access comes into force on 1.1.05, there will be a public right of access to information, subject to certain exemptions. In addition to the public right of access, the ALMO's have "publication schemes" under the Act, which have been approved by the Information Commissioner. They are obliged to publish information in accordance with their schemes.
- 3.5.3 The Protocol also includes rights for Scrutiny Board Members to get information from the ALMOs, and Members' legal rights to information.
- 3.5.4 In addition to the legal right of access on a "need to know" basis, as the ALMOs are regulated companies, Members also have the legal right to information about the affairs of the company as they reasonably requires for the proper discharge of his/her duties as a Member.
- 3.5.5 The Council itself is also entitled to key information under the provisions of the Management Agreements, for audit or inspection purposes or so that the Council can properly undertake its functions.

3.6 Company Requirements

- 3.6.1 The normal quorum requirement for board meetings is 2 board members from each group, unless the actual number of board members in any group falls below 2. Each board member present has one vote, and in the event of a "tie" the chair has a second or casting vote.

- 3.6.2 It is not always necessary for the board to have formal meetings, in order to take decisions. In emergencies, a resolution in writing signed by at least 75% of all the Board Members entitled to receive notice of a meeting of the Board or of a committee of the Board, and the chair, and which satisfies the usual quorum requirements is as valid as if it had been passed at a board meeting, and the resolution may consist of several identical documents each signed by one or more board members.

4. THE DIFFERING ROLES OF THE COUNCIL AND THE ALMOS

4.1 Policy Issues

Under the Management Agreements, the Council has delegated a large number of housing management functions to the ALMOs, ranging from repairs and maintenance, stock condition, and modernisation and improvements, to selecting tenants, granting new tenancies, and recovery of arrears, to performance management, business planning and employee relations. Details are set out in the Agreements. The Council retains the strategic role, setting policies such as Leeds Housing Strategy and action plan, the Homelessness Strategy, the Tenant Involvement Strategy, the Supporting People Strategy and the Lettings Policy. In the Agreements, the ALMOs are committed to complying with and implementing all relevant housing management and related policies and strategies of the Council. The ALMOs are also committed to ensuring their business plans support and take account of the Council Plan, and related plans and strategies so far as is reasonably practicable.

4.2 Who decides what within the ALMOs

- 4.2.1 The company documents say the boards can delegate powers to committees. These have to have at least 2 board members on them. They can also include non-board members, but board members have to be in the majority. They need to have terms of reference, and these need to make it clear whether the committee can take decisions on their own, or whether they need to refer matters back to the full board for decisions. The nature and extent of delegations need to be notified to the Council. Committees will need to keep formal minutes, have disclosures of interests etc, and will be subject to the Access to Information Protocol mentioned above.
- 4.2.2 Alternatively, the boards can set up informal sub-groups or working groups. The boards cannot delegate powers to them, and these groups can only propose matters to the boards. There are no formal requirements for membership, minutes etc, and the Access to Information Protocol does not apply. No formal notification to the Council is needed.
- 4.2.3 In relation to delegations to ALMO officers, each ALMO has a Chief Officer, and it has been agreed the theme of the Council's modernising reforms should be followed. Consequently, there is usually a general delegation of all matters by the boards to the Chief Officer, subject to the chair of the board directing that a matter should be referred up to the board, or the Chief Officer deciding their delegated authority should not be exercised, and that a matter should be referred up to the board. This is also subject to specific responsibilities allocated by the ALMOs' Financial Procedure Rules, Contracts Procedure Rules, and other policies. Queries

from Members who are not on the relevant ALMO board, should be directed to the Chief Officer in the first instance.

5. FORMAL RELATIONSHIP BETWEEN THE COUNCIL AND THE ALMOS

5.1 General

The formal relationship between the Council and the ALMOs is set out in the Management Agreements. These Agreements cover a range of key issues such as what services the ALMOs are to deliver and to what standards, personnel matters, procurement, and financial arrangements. The Agreements contain a number of safeguards for the Council. In particular, the ALMOs have to comply with a performance management framework, and produce an annual report detailing how far the framework has been complied with, and focusing on areas of success or failure. There are also provisions requiring the Council to be provided with certain key information, and for regular meetings between the Council and the ALMOs. In the last resort, there are provisions which enable the Council to terminate the Agreements, and provide the services in other ways.

5.2 Business Plans

The Agreements set out procedures for the ALMOs to prepare draft 30 year business plans on an annual basis. There are certain fundamental grounds on which the Council can refuse to agree a plan, for example if it includes items which the Council believes have not been delegated, or cannot be funded. Ultimately, if a draft plan cannot be agreed between the Director of Neighbourhoods and Housing, and the ALMO Chief Officer, there can be a reference to an independent expert nominated by the Chartered Institute of Housing.

5.3 Scrutiny

5.3.1 The Agreements commit the ALMOs to providing information, and giving evidence, via their officers in relation to scrutiny inquiries or investigations. The terms of reference of the scrutiny boards empower them to review the performance of outside organisations. Local government legislation says officers of the Council can be required to attend, and others can be invited. ALMO officers can be required to attend by virtue of the Agreements.

5.4 Company Rules

5.4.1 Even where housing management matters have been delegated to the ALMOs, the delegation is to the company, and the Council as the only member of the company could take steps to overturn a board decision, or could decide that particular issues should not be decided by the board, but only by the general meeting, i.e. by the Council itself.

5.5 Termination rights

5.5.1 The Agreements say that if an ALMO breaches the Agreement, the Council could revert to providing the whole or part of the housing management services itself, or arrange for someone else to provide them, or terminate part or the whole of the Agreement. The Council could take part of the services back, and deliver them

itself, or get another organisation to deliver them, until it was satisfied the ALMO was willing and able to deal with these in line with the Agreement. If the Council partly terminated the Agreement, it would also be entitled to use the ALMO's premises and assets to do this. Alternatively, where the Management Agreement has been broken, the Council can remove board members. However, in deciding what action is appropriate, the Council has to act proportionately, and termination is subject to the dispute resolution procedure by an independent expert.

6. MONITORING AND REVIEW

- 6.1 Compliance with the various rules set out in this Protocol will be monitored by the Department of Neighbourhoods and Housing (Strategic Landlord), with assistance from Legal and Democratic Services.
- 6.2 This Protocol will be reviewed jointly on an annual basis, by the Department of Neighbourhoods and Housing, and the ALMOs, with assistance from Legal and Democratic Services.

***STANDARDS COMMITTEE –
PROCEDURE FOR DEALING WITH
COMPLAINTS OF MISCONDUCT
AGAINST MEMBERS OF THE COUNCIL***

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Standards Committee

PROCEDURE FOR DEALING WITH COMPLAINTS OF MISCONDUCT AGAINST MEMBERS OF THE COUNCIL

1. INTERPRETATION

“Authority” means Leeds City Council;¹

“Chair” means the Chair of the Committee;²

“Code of Conduct” means the Code of Conduct adopted by the Authority;³

“Committee” means the Standards Committee;

“Complainant” means the person who made the complaint;

“day” means a working day unless otherwise indicated;

“ESO” means the Ethical Standards Officer appointed by the Standards Board who referred the *Referred Complaint* to the Monitoring Officer, or the ESO’s nominee;

“Investigator” in respect of a Referred Complaint *for Determination* means the ESO who referred the report to the Monitoring Officer or the ESO’s nominee.⁴ *In respect of a Referred Complaint for Investigation, it means the Monitoring Officer or nominee.* In respect of a Local Complaint, it means the Monitoring Officer or nominee;

“Legal Advisor” means the person providing legal advice to the Committee;⁵

“Local Code” means ⁶

- the National Code of Local Government Conduct where the alleged breach is committed before 5 April 2002; or
- any of the Authority’s Protocols/Codes which refer to the conduct of members, other than the Code of Conduct; or
- a breach of the Members’ Allowances Scheme in relation to the requirement to submit six monthly reports, or a gross neglect of duties highlighted by such a report.

“Local Complaint” means a complaint that the Member has breached a Local Code;

¹ Or, where relevant, the parish council within its area, in respect of which the Standards Committee is exercising functions under Part III of the Local Government Act 2000.

² Or other Member elected by the Committee in the absence of the Chair.

³ Under Section 51 of the Local Government Act 2000.

⁴ In respect of a hearing it also includes the Monitoring Officer’s nominee where the ESO has not chosen to attend the hearing.

⁵ This will be the Monitoring Officer or nominee who may be another legally qualified officer of the Authority or someone legally qualified who is appointed for this purpose from outside the Authority.

⁶ The Monitoring Officer will provide copies of these on request.

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“Member” means the member or co-opted member⁷ of the Authority who is the subject of the complaint of misconduct. It also includes the Member’s nominated representative where the context requires this;

“Party” means the Member or the Investigator but does not include the Complainant;

“Referred Complaint” means a complaint that a Member has breached the Authority’s Code of Conduct, and which an ESO has referred to the Monitoring Officer⁸;

“Referred Complaint for Determination” means a Referred Complaint which the ESO has investigated and referred for the Standards Committee to determine.⁹

“Referred Complaint for Investigation” means a Referred Complaint which the ESO has referred for the Monitoring Officer to investigate.¹⁰

“Standards Board” means the Standards Board for England.

2. GENERAL

- 2.1 This procedure applies to complaints made by members, officers of the Authority or members of the public. These may be Local Complaints made to the Monitoring Officer or Referred Complaints, which were originally made to the Standards Board.
- 2.2 This is the usual procedure to be followed in respect of both Local and Referred Complaints.
- 2.3 The general principles of conduct¹¹ will be used by the Committee as a guide to interpretation of the Local Codes and the Code of Conduct.
- 2.4 Except for the requirements¹² which are listed below, the Committee (or in relation to the pre-hearing process, the Chair), may vary the procedure as it considers appropriate in the circumstances. The Committee will deal with a Complaint in the manner which it considers most suitable to clarify the issues before it, and generally to the just handling of the proceedings.
- 2.5 Requirements which may not be waived:

⁷ As defined in Section 47 Local Government Act 2000. It also includes a former member or co-opted member. It does not include Parish Council members unless they are the subject of a Referred Complaint.

⁸ Under section 64(2) or section 60(2) or (3) of the Local Government Act 2000.

⁹ In accordance with section 64(2) of the Local Government Act 2000

¹⁰ In accordance with section 60(2) or (3) of the Local Government Act 2000

¹¹ As set out in the Relevant Authorities (General Principles) Order 2001, and attached at the end of this procedure.

¹² These are imposed by the Local Authorities (Code of Conduct) Local Determination Regulations 2003. The Regulations apply only to Referred Complaints, but where appropriate the requirements have been extended to apply to Local Complaints dealt with under this procedure.

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- 2.5.1 Where the Committee is considering a Referred Complaint *for Determination*, the Committee will ensure that the hearing takes place
- within three months of the date on which the Monitoring Officer received the report from the ESO; and
 - at least 14 days¹³ after the date on which the Monitoring Officer sent the Member a copy of the report, unless the Member agrees to an earlier date;
- 2.5.2 Where *the Committee is considering a Referred Complaint for Investigation*, the Committee will ensure that the hearing takes place
- *within three months of the date on which the Investigator completed the report; and*
 - *at least 14 days¹⁴ after the date on which the Investigator sent the Member a copy of the report, unless the Member agrees to an earlier date;*
- 2.5.3 Where the Committee is considering a Local Complaint, the Committee will ensure that the hearing takes place
- within three months of the date on which the Investigator completed the report, or as soon as reasonably practicable after that; and
 - at least 14 days¹⁵ after the date on which the Investigator sent the Member a copy of the report, unless the Member agrees to an earlier date;
- 2.5.4 Where the Committee is considering either a Local or a Referred Complaint, the Committee will ensure that:
- the hearing is conducted having regard to guidance issued by the Standards Board;¹⁶
 - the Committee gives the Member an opportunity to present evidence in support of the Member's case;
 - the Committee gives the Member, or, at the choice of the Member, the Member's representative, the opportunity to make representations at the hearing. These may be made either orally, or, at the choice of the Member, in writing.

2.6 Representation

A Member may be represented by a barrister, a solicitor or with the consent of the Committee, any other person the Member wishes.¹⁷

¹³ These are not working days.

¹⁴ These are not working days.

¹⁵ These are not working days.

¹⁶ Under Section 57 of the Local Government Act 2000

¹⁷ The Committee will usually provide its consent, unless the representative is directly involved in the Complaint.

**3. RECEIPT/PRELIMINARY INVESTIGATION OF LOCAL COMPLAINTS AND
RECEIPT OF REFERRED COMPLAINTS FOR INVESTIGATION**

3.1 Receipt of Local Complaints

3.1.2 A Local Complaint must be made in writing to the Monitoring Officer.

3.1.3 The Monitoring Officer will acknowledge receipt of a Local Complaint to the Complainant within 5 days.

3.1.4 The Monitoring Officer will notify the Member within 5 days of receiving the Complaint¹⁸:

- that s/he has received the Complaint;
- who the Complainant is;¹⁹
- what the Complaint is about, including which Local Code it is alleged that the Member has breached;
- the procedure which will be followed in respect of the Complaint.

3.2 Preliminary Investigation- Local Complaints

3.2.1 The Monitoring Officer or nominee will carry out a preliminary investigation of a Local Complaint in order to decide whether it warrants a full investigation.

3.2.2 The Monitoring Officer will complete the preliminary investigation within 15 days of receiving the Local Complaint, or as soon as reasonably practicable after that.

3.2.3 The Monitoring Officer will consider as part of the preliminary investigation:-

- whether the conduct complained of may amount to breach of a Local Code;
- whether the conduct complained of merits investigation by some other agency (e.g. the police);
- whether the Complaint has already been investigated;
- whether the Complaint is supported by sufficient information (either provided by the Complainant or obtained by the Monitoring Officer from initial enquiries) to justify a full investigation.

3.2.4 The purpose of the preliminary investigation is to enable the Monitoring Officer to identify if the Local Complaint:-

- is frivolous or unsupported by any reliable information;
- falls outside the Committee's terms of reference; or

¹⁸ In exceptional cases where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may complete the preliminary investigation without notifying the Member;

¹⁹ In accordance with the Authority's Whistleblowing policy, the identity of the Complainant may be protected in some cases.

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- has already been investigated.

3.2.5 Within 3 days of completing the preliminary investigation, the Monitoring Officer will:-

- decide whether or not the Local Complaint warrants a full investigation;
- notify the Complainant and the Member of the decision. Where the decision is not to take further action s/he will also give reasons for this.

3.3 *Receipt of referred complaints for investigation*

3.3.1 *On receipt of a Referred Complaint for Investigation, unless otherwise directed by the ESO, the Monitoring Officer shall inform*

- *the Member;*
- *the Complainant; and*
- *any parish council concerned*

that the Complaint has been referred to the Monitoring Officer for investigation.

3.3.2 The Monitoring Officer will also

- explain what will happen next;
- explain who will be in contact again;
- provide any directions s/he wants to make regarding the investigation.

4 INVESTIGATION OF COMPLAINTS (LOCAL COMPLAINTS AND REFERRED COMPLAINTS FOR INVESTIGATION)

4.1 The Monitoring Officer may act as Investigator, or may appoint a nominee to do this²⁰.

4.2 *The Monitoring Officer will have regard during the conduct of the investigation to any relevant guidance issued by the Standards Board to Monitoring Officers.*

4.3 The purpose of a full investigation is to establish the facts of the Complaint, so that the Committee may then make a properly informed judgement about it.

4.4 When conducting an investigation, the Investigator will

- seek to interview and/or obtain information from anybody within or outside the Authority who may be able to help establish the facts.

4.5 *When conducting an investigation the Investigator may*

²⁰ The Monitoring Officer must consider in respect of each Local Complaint whether s/he may have, or be perceived to have, a conflict of interest if s/he acts as Investigator, which would make it inappropriate for the Monitoring Officer to act as Investigator. *In respect of a Referred Complaint for Investigation, the Monitoring Officer may appoint the Deputy Monitoring Officer, or any person nominated under the provisions of section 82A(2) or (3) of the Local Government Act 2000 to perform any function.*

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- *require any of the Authorities concerned to provide such advice and assistance as s/he may reasonably need to assist him or her in the investigation;*
- *require the Authority (other than a parish council), to meet the cost of any advice and assistance provided so far as such cost is reasonable²¹;*
- *require the Authority to afford reasonable access to such documents in the possession of the Authority as appear to the Investigator to be necessary for the purpose of conducting the investigation.*

4.6 Failure by an officer to assist the Investigator will be referred to the relevant Authority (where a parish council) or to the Director and/or Chief Executive of the Authority for appropriate action to be considered, which may include disciplinary investigation.

4.7 Referral back to ESO

Where the Investigator of a Referred Complaint for Investigation conducts an investigation, s/he may at any stage before completing the investigation request in writing to the ESO that the Complaint be referred back to the ESO for the ESO to conduct the investigation. The Investigator will comply with any direction given by the ESO in response.

4.8 The Investigator will make clear to any person interviewed that any information which that person provides may be shared with the Committee and may be made public. Any person interviewed will be entitled to be accompanied by a representative of their choice.

4.9 The Investigator will:-

- invite the Complainant for interview; and
- give the Complainant the opportunity to submit any additional material which the Complainant considers is relevant to the investigation.

4.10 The Investigator will:-

- give the Member a full copy of the Complaint;²²
- invite the Member for interview;
- give the Member the opportunity to submit any additional material which the Member considers is relevant to the investigation;
- invite the Member to identify any person who the Member considers should be interviewed as part of the investigation;
- *give the Member the opportunity to comment on the allegations made.*

4.11 Draft Reports

²¹ *If the Authority is a parish council, the Investigator may require Leeds City Council as responsible authority to meet any costs incurred by that parish council so far as such cost is reasonable*

²² *In accordance with the Authority's Whistleblowing Policy, the identity of the Complainant may be protected in some cases in respect of a Local Complaint. For a Referred Complaint, it may also be withheld at the direction of the ESO.*

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- 4.11.1 When the Investigator has concluded the investigation, the Investigator will consider whether to issue a draft report before the final report.
- 4.11.2 Where the Investigator decides to issue a draft report, s/he will issue this to
- the Member; and
 - the Complainant
- for review and comment, giving the Investigator the opportunity to check facts and ensure that all aspects of the case have been explored in sufficient detail.
- 4.11.3 The Investigator does not need to send the draft report to the relevant parish clerk.
- 4.11.4 The Investigator will mark the draft report “ confidential” and “draft”.
- 4.11.5 The Member may make representations about the draft report in whatever manner is most convenient to him or her.
- 4.11.6 The Investigator will take whatever action s/he considers to be appropriate in view of any representations received.

4.12 The Final Report

4.12.1 The Report should *be written* and contain:-

- a “final” marking;
- the date;
- (where a Referred Complaint) the legislation under which the investigation is being carried out;
- the relevant sections of the Local Code or Code of Conduct;
- evidence;
- the Investigator’s findings of fact;
- the Investigator’s reasoning;
- *the investigator’s finding whether*
 - *there has been a failure to comply with the Local Code or Code of Conduct - a “finding of failure”;*
 - *there has not been a failure to comply with the Local Code or Code of Conduct – a “finding of no failure”.*
- documents relied on by the Investigator in reaching his or her conclusions.

4.12.2 The report should state that it represents the Investigator’s final findings and will be presented to the Standards Committee.

5 NOTIFICATION OF REPORT

5.1 Final Reports – Local Complaints and Referred Complaints for Investigation

5.1.1 *The Investigator will send a copy of the final report to*

- *the Member;*
- the Complainant;

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- *the Standards Committee*²³;
- the clerk of any relevant parish council²⁴;
- the ESO²⁵
- the Monitoring Officer²⁶

5.1.2 The report will be accompanied by information explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for this.

5.2 Local Complaints and Referred Complaints for Investigation

5.2.1 The Monitoring Officer will:

within 2 days of completing or receiving the report

- ask the Committee Clerk to make arrangements for the Committee either to
 - start the pre-hearing process (where the report contains a finding of failure); or
 - consider the report in accordance with paragraph 6 below (where the report contains a finding of no failure).
- notify the Committee Clerk of the date on which the report was completed and the date on which the report was sent to the Member;

within 5 days of completing or receiving the report, tell the Committee Clerk and the Chair who the Legal Advisor to the Committee will be for the pre-hearing process and the hearing.²⁷

5.3 Referred Complaint for Determination

5.3.1 When the Monitoring Officer receives a copy of an Investigator's report relating to a Referred Complaint for Determination s/he will:-

- within 2 days, send a copy of the report to the Member;
- within 2 days, send a copy of the report to all members of the Committee;²⁸
- within 2 days, ask the Committee Clerk to make arrangements for the Committee to consider the report, and to start the pre-hearing process and notify the Committee Clerk of the date on which the report was received from the Investigator and on which it was sent to the Member.
- within 5 days, tell the Committee Clerk and the Chair who the Legal Advisor to the Committee will be for the pre-hearing process and the hearing.²⁹

²³ Members of the Committee are advised that the contents of the Investigator's report remains confidential until all or part of it is brought into the public domain at the hearing.

²⁴ Referred Complaint only

²⁵ Referred Complaint only

²⁶ Where the Monitoring Officer has not acted as Investigator

²⁷ The Monitoring Officer will usually act as Legal Advisor, but must consider in respect of each Complaint whether s/he may have, or be perceived to have, a conflict of interest if s/he acts as Legal Advisor, which would make it inappropriate to do so.

²⁸ Members of the Committee are advised that the contents of the Investigator's report remains confidential until all or part of it is brought into the public domain at the hearing.

6.0 CONSIDERATION OF REPORT BY THE COMMITTEE WHERE FINDING OF NO FAILURE (Local Complaints and Referred Complaints for Investigation)

- 6.1 *Where the Committee receives a report which contains a finding of no failure, it will meet to consider the report and decide whether*
- *it accepts the Investigator's finding (a "finding of acceptance") or*
 - *the matter should be considered at a hearing of the Standards Committee.*
- 6.2 *At this meeting, the Committee will consider the report; it will not interview witnesses, nor take representations from the parties.*
- 6.3 *The Committee may make recommendations to the Authority on matters arising from the report.*
- 6.4 *As soon as reasonably practicable after making a finding of acceptance, the Committee shall give written notice of the finding to*
- *the Member;*
 - *the ESO³⁰;*
 - *any parish council³¹; and*
 - *the Complainant³²*
- 6.5 *The Committee shall also as soon as reasonably practicable, arrange for a notice to be published stating that the Committee have found that there has not been a failure on the part of the Member to comply with the Code of Conduct. This notice shall not be published if the Member requests that it should not be.*

7.0 HEARINGS BY COMMITTEE

- 7.1 *The Standards Committee shall conduct a hearing in relation to*
- *a Referred Complaint for Determination;*
 - *a report prepared by an Investigator which concerns a finding of failure; or*
 - *a Complaint which the Committee has decided should be considered at a hearing, in accordance with paragraph 6 above.*

8 THE PRE-HEARING PROCESS

²⁹ The Monitoring Officer will usually act as Legal Advisor, but must consider in respect of each Complaint whether s/he may have, or be perceived to have, a conflict of interest if s/he acts as Legal Advisor, which would make it inappropriate to do so.

³⁰ Referred Complaint only

³¹ Referred Complaints only

³² Also, to the Standards Committee of the authority concerned, if not the Standards Committee that made the finding, and the Standards Committee of any other authority concerned, if not the Standards Committee that made the finding.

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- 8.1 The pre-hearing process will only deal with procedural issues. It will normally be carried out in writing, although the Chair has discretion to convene a pre-hearing meeting with the Parties, where the Chair considers this is necessary.
- 8.2 The purpose of the pre-hearing process is to:
- identify whether the Member disagrees with any of the findings of fact in the report;
 - decide whether or not those disagreements are significant to the hearing;
 - decide whether or not to hear evidence about those disagreements during the hearing;
 - decide whether or not there are any parts of the hearing that should be held in private; and
 - decide whether or not any parts of the report or other documents should be withheld from the public.
- 8.3 After consultation with the Chair and within 3 days of receiving notification from the Monitoring Officer the Committee Clerk will:-
- provide a copy of this procedure to the Member;
 - send the Member an outline of his/her rights and responsibilities (Annex A to this procedure);
 - invite the Member to respond in writing by a set time³³ to the questions set out in Forms 1, 2, 3, 4 and 5 (Annex B to this procedure), in order to find out whether the Member:
 - disagrees with any of the findings of fact in the report, including the reasons for any disagreements;
 - wishes to make representations about any sanctions to be imposed if the Committee decide that the Member has breached the Code of Conduct or a Local Code;
 - wants to be represented at the hearing by a solicitor, barrister or any other person;
 - wants to give evidence to the Committee, either verbally or in writing;
 - can come to the hearing on the proposed date;
 - wants any part of the hearing to be held in private; and
 - wants any part of the report or other relevant documents to be withheld from the public.
- 8.4 After consultation with the Chair and within 3 days of receiving the Member's response the Committee Clerk will:-
- send the Member's response to the Investigator for comment and response within a set time³⁴ to the questions set out in Forms 6 and 7 (Annex C to this procedure) in order to find out whether the Investigator

³³ The Chair will decide the set time in relation to each Complaint, according to the relevant circumstances, but it will be a minimum of 10 days.

³⁴ The Chair will decide the set time in relation to each Complaint, according to the relevant circumstances, but will be a minimum of 10 days.

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- wants to be represented at the hearing;
 - wants to call relevant witnesses to give evidence to the Committee;
 - wants any part of the hearing to be held in private; and
 - wants any part of the report or other relevant documents to be withheld from the public.
- After the set time periods have expired, (or after the Committee Clerk has received responses from both Parties if this is earlier), the Committee Clerk will refer the responses of the Parties to the Chair. The Chair will review the information received, and, after consultation with the Legal Advisor, may decide any issues which will help the Committee to determine the Complaint.

8.6 These decisions may include but are not limited to the following matters:

- whether the Committee consents to the Member being represented by a non-legally qualified representative;
- whether witnesses will be heard at the hearing;
- whether the Committee wishes to call any witnesses to attend who may help the Committee to determine the Complaint;³⁵
- whether the Committee is likely to refuse to hear evidence from any of the witnesses notified by either Party, and the reasons for this;³⁶
- the date, time and place of the hearing;
- a request to either Party to provide by a set date such details, supplementary statement or access to documents as may be reasonably required for the determination of the Complaint;
- In respect of a Referred Complaint, where the ESO has indicated that the ESO does neither wish to attend, nor be represented at the hearing, a request to the Monitoring Officer to nominate a person to act as Investigator at the hearing.

8.7 Pre-hearing process summary

8.7.1 The Chair, in consultation with the Legal Advisor will then prepare a pre-hearing process summary, in accordance with Annex D to this procedure. This will be sent to the Parties at least 10 days before the hearing.

8.7.2 The purpose of the summary is to:

- set the date, time and place for the hearing;³⁷
- summarise the Complaint;
- outline the main facts of the Complaint that are agreed;
- outline the main facts which are not agreed;
- note whether the Member or the Investigator will go to or be represented at the hearing;

³⁵ This may include the Complainant. The Committee cannot however order witnesses to appear or give evidence.

³⁶ The Party will be able to make representations about this to the Committee at the beginning of the hearing, provided that the Party has notified the Committee Clerk at least 10 days before the hearing that they intend to do so.

³⁷ Unless a Complaint is complicated, the Committee will aim to complete a hearing in one sitting or in consecutive sittings of no more than 1 day in total.

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- list those witnesses, if any who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

9 HEARINGS - PROCEDURE

9.1 General

Note : the Committee may vary this procedure in respect of hearings in accordance with the provisions of paragraphs 2.3 and 2.4 above.

9.2 Purpose of the Hearing

The purpose of the hearing is to test the report, by examining the reasoning contained within the report and the quality of the evidence relied upon. The Committee's approach should therefore be inquisitorial, based on seeking information in order to identify potential flaws in the report and to clarify issues, rather than an adversarial approach where the focus would be on hearing evidence and cross-examining witnesses.

9.3 Documents

9.3.1 The Committee Clerk, after consultation with the Legal Advisor and the Parties, will collate the documents provided by the Parties to be considered by the Committee during the hearing.

9.3.2 Where a Party has asked for a document be kept private, this document will not be made available to the public with the agenda before the meeting.³⁸

9.4 Witnesses

9.4.1 A Member may arrange for witnesses to attend at a hearing as the Member wishes, although the Committee may place a limit on the number of witnesses a Member may call if it is of the view that the number of witnesses is unreasonable.

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

9.4.3 The Committee may arrange for witnesses to attend as it considers appropriate.

9.5 Legal Advice

³⁸ The Committee will have to consider which documents should be made available for public inspection – see 6.9.2 below.

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The Committee may take legal advice from its Legal Advisor at any time during the hearing or while it is deliberating. The substance of any legal advice given to the Committee should be shared with the Parties attending the hearing.

9.6 Questioning

- 9.6.1 The Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned.
- 9.6.2 At any time during the hearing the Committee may directly question any witness or Party on any point raised either in evidence or by way of representations.
- 9.6.3 It is for the Committee to decide whether Parties may question or cross-examine witnesses. The Committee can ask for questions to be directed through the Chair.

9.7 New Evidence

- 9.7.1 The Committee will not allow the Member to raise new disagreements over findings of fact in the Investigator's report at the hearing unless there are good reasons for doing so.³⁹
- 9.7.2 If the Member disagrees with any relevant fact in the Investigator's report without having given prior notice of the disagreement⁴⁰, the Committee will ask the Member for the reasons why the evidence was not raised before.
- 9.7.3 At a hearing of a Referred Complaint at which the ESO is not present, the Committee will consider whether or not it would be in the public interest to continue in the ESO's absence, even if an Investigator has been nominated by the Monitoring Officer for the purpose of the hearing.
- 9.7.4 After considering the Member's explanation for not raising the issue earlier the Committee may then:
- continue with the hearing relying on the information in the Investigator's report; or
 - allow the Member to make representations about the issue, and allow the Investigator to respond and call any witnesses, as necessary; or
 - postpone the hearing to arrange for appropriate witnesses to be present, or for the ESO to be present.

9.8 Failure to attend

- 9.8.1 If either Party fails to attend a hearing, the Committee will consider whether there is sufficient reason for the failure. The Committee shall consider any

³⁹ The Committee should not re-open an investigation. However if more evidence becomes available after the completion of the investigation the Committee may consider that evidence during the course of the hearing.

⁴⁰ by raising it in the course of the pre-hearing process, or as soon as practicable after that.

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representations submitted by the Party in writing before making any determination in the Party's absence.

9.8.2 If the Committee does not consider that there is sufficient reason, it will consider the Complaint and make a determination in the Party's absence.

9.8.3 If the Committee does consider there is sufficient reason, it will adjourn the hearing to another date.⁴¹

9.9 *Adjournment for further information or investigation*

9.9.1 *The Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Investigator to seek further information or undertake further investigation on any specified point.*

9.9.2 *The Committee may not adjourn the hearing on more than one occasion under this paragraph.*

9.10 *Referral back to the ESO- Referred Complaints*

9.10.1 *The Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ESO that the matter be referred back to the ESO for investigation. Any such request must set out the Committee's reasons for making it.*

9.10.2 *The Committee shall comply with any direction given by the ESO in response to such a request. Where the ESO directs that the Committee should continue to deal with the Complaint, the hearing must be held within three months of the direction.*

9.11 *Stage 1: Introductions and procedure*

9.11.1 The Committee and its advisors will assemble in the hearing room.

9.11.2 At the start of the Hearing all parties present will be invited to enter the hearing room.

9.11.3 The Chair will ensure that the Parties are formally introduced.

9.11.4 The Committee will consider whether to exclude the public from any parts of the hearing.⁴² There is a clear presumption that hearings will be held in

⁴¹ In respect of Referred Complaints, this is subject to the Committee complying with the requirement that the hearing takes place within three months of the date when the Monitoring Officer received the report from the ESO.

⁴² See further Annexes E and F. The Committee will need to keep this issue under review throughout the hearing, and may consider excluding the public on each occasion it makes its deliberations in making any finding on a Complaint – marked * in this procedure. If evidence is heard in private, the Legal Advisor should warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing.

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public. The Committee will also have to decide which parts of the agenda are not to be made available for public inspection.

9.11.5 The Legal Advisor will outline the procedure which the Committee proposes to follow for the hearing. If the Committee proposes to vary the procedure from that set out below, it will invite and consider representations on this from the Parties, before proceeding.

9.12 Stage 2: Outstanding Preliminary procedural issues

9.12.1 The Committee will then invite the Parties to make representations about any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

9.12.2 The Committee will then decide these issues or disagreements.*

9.13 Stage 3: Making findings of fact

9.13.1 After dealing with any preliminary issues, the Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.

9.13.2 If there is no significant disagreement about the facts, the Committee will move on to Stage 2 of the hearing.

9.13.3 If there is a disagreement, the Committee will invite the Investigator to make any necessary representations to support the relevant findings of fact in the report.

9.13.4 The Investigator may, with the agreement of the Committee, call any necessary supporting witnesses to give evidence.

9.13.5 The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

9.13.6 The Member will then have the opportunity to make representations to support the Member's version of the facts and, with the agreement of the Committee, may call any witnesses to give evidence.

9.13.7 The Committee may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.

9.13.8 If the Member disagrees with most of the facts, the Committee may ask the Investigator to start by making representations about all the relevant facts, instead of discussing each fact individually.

9.13.9 The Committee will make findings in relation to the facts*.

9.13.10 The Chair will announce the Committee's findings of fact.

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9.14 Stage 4: Did the Member fail to follow the Code⁴³?

- 9.14.1 The Committee will then consider whether or not, based on the facts it has found, the Member has failed to follow the Code.
- 9.14.2 The Committee will invite the Member to give relevant reasons why the Committee should decide that the Member has not failed to follow the Code, and consider any written representations from the Member about this.
- 9.14.3 The Committee will then invite the Investigator to give relevant reasons why the Committee should decide that the Member had failed to follow the Code, and consider any written representations from the Investigator about this.
- 9.14.4 The Member will be invited to make any final relevant representations, in response to anything raised by the Investigator.
- 9.14.5 The Committee will then decide whether or not the Member has failed to follow the Code.*
- 9.14.6 The Chair will announce the Committee's decision as to whether or not the Member has failed to follow the Code.
- 9.14.7 Where the Committee decides that the Member has not failed to follow the Code, the Committee will then move on to Stage 6 of this procedure.

9.15 Stage 5: Sanctions

- 9.15.1 The Committee will consider any verbal or written representations from the Investigator and the Member about:-
- whether or not the Committee should impose any sanction;
 - what form any sanction should take;
- 9.15.2 The Committee will take into account any guidelines it has agreed for imposing sanctions.
- 9.15.3 The Committee will then decide whether or not to impose a sanction on the Member, and if so what the sanction should be *, in accordance with Annex G to this procedure.⁴⁴

⁴³ In relation to a Referred Complaint this means the Code of Conduct, and in relation to a Local Complaint, the Local Code.

⁴⁴ In accordance with Regulation 7 of the Local Authorities (Code of Conduct) Local Determination Regulations 2000, in relation to Referred Complaints, the Committee must make one of the following findings:-

- that the Member had not failed to comply with the Code of Conduct; or
 - that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered by the Committee; or
- that the Member had failed to comply with the Code of Conduct and that a sanction should be imposed.

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- 9.15.4 The Committee will also decide how much of the information which it has considered should be made available for public inspection after the announcement of its decision in public.⁴⁵
- 9.15.5 The Chair will announce the Committee's decision.
- 9.16 Stage 6: Recommendations to the Authority
- 9.16.1 The Committee will go on to consider any verbal or written representations from the Investigator about whether or not the Committee should make any recommendations to the Authority, with a view to promoting high standards of conduct among Members.
- 9.17 Stage 7: Making the Findings Public
- 9.17.1 The Chair will confirm the Committee's decision, with reasons, in public at the end of the hearing, and provide a short written decision on that day.
- 9.17.2 The Committee Clerk will where possible prepare the full written decision in draft on the day of the hearing.
- 9.17.3 In relation to a Referred Complaint⁴⁶, the Committee shall within 10 days, or as soon as reasonably practicable, take reasonable steps to give written notice of its findings and the reasons for the findings to:
- the Member;
 - the ESO;
 - the Standards Committee;
 - the Standards Committee of any other authority concerned⁴⁷;
 - any parish council concerned; and
 - the Complainant.
- 9.17.4 The decision shall be in the format set out in Annex H.
- 9.17.5 The Committee Clerk shall also arrange for a summary of the finding to be published in one or more newspaper circulating in the area of the Authority⁴⁸, except where the Committee has found that the Member had not failed to comply with the Code of Conduct, and the Member asks for the summary not to be published.
- 9.17.6 In relation to Local Complaints, the Committee shall within 10 days, or as soon as reasonably practicable, give written notice of its findings and the reasons for the findings to:

⁴⁵ The Standards Committee Protocol will be followed in relation to any dealings with the media about the Complaint.

⁴⁶ In accordance with Regulation 8 of the Local Authorities (Code of Conduct) Local Determination Regulations 2003

⁴⁷ where at the time of the Complaint, the Member was a member of another authority

⁴⁸ In accordance with Regulation 8 of the Local Authorities (Code of Conduct) Local Determination Regulations 2003

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- the Member;
- The Investigator;
- The Standards Committee; and
- the Complainant.

10 MONITORING

- 10.1 The Monitoring Officer will report on annually to the Committee on how the “gate-keeping” role has been discharged, in respect of preliminary investigations under paragraph 3.2, and in respect of reports where s/he decided that no further action should be taken, under paragraph 4.1.
- 10.2 The Monitoring Officer will report to the Standards Committee annually on whether the arrangements set out in this procedure have been complied with, and will include any proposals for amendments in the light of any issues that have arisen during the year.

11 REVIEW OF PROCEDURE

The Standards Committee will review this procedure at the completion of each Complaint determined in accordance with it.

GENERAL PRINCIPLES GOVERNING MEMBERS' CONDUCT

1. Selflessness

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

2. Honesty and Integrity

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

3. Objectivity

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

4. Accountability

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

5. Openness

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

6. Personal Judgement

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

7. Respect for Others

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

8. Duty to Uphold the Law

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

9. Stewardship

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

10. Leadership

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

NOTE

The principles are expected to govern only the official conduct of Members and co-opted Members of the Council, except the second and eighth, which have effect on all occasions.

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Procedure for dealing with complaints of misconduct against Members

MEMBERS' RIGHTS AND RESPONSIBILITIES - OUTLINE

You have the right to:

- go to the hearing and present your case;
- call a reasonable number of witnesses to give relevant evidence to the Standards Committee; and
- be represented at the hearing by a solicitor, barrister, or with the consent of the Committee, any other person. (*You will, however, be responsible for meeting the cost of any representation*).

Any disagreements with the findings of fact in the Investigator's report must be raised during the pre-hearing process. **The Committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.**

You do not have to go to the hearing or be represented. If you choose not to go to the hearing, the Committee may make a determination in your absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the Standards Committee is persuaded that there is good reason to exclude the public, in line with the relevant access to information and human rights legislation.

After considering the written and verbal presentations, the Standards Committee will reach and announce its findings of fact, whether or not you have failed to follow the Code of Conduct or a Local Code and whether or not a sanction should be set. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the Standards Committee will give you its full written decision within 10 working days of the end of the hearing.

Breaches of the Authority's Code of Conduct

If the Standards Committee decides that you have failed to follow the Code of Conduct and that you should be penalised, it may do any one or a combination of the following:

- censure you. This is the only form of sanction available when dealing with a person who is no longer a member of the Authority;
- restrict your access to *the premises or resources of the Authority for up to three months (provided that the restrictions are reasonable and proportionate to the breach, and do not unduly restrict your ability to perform your functions as a Member)*;
- suspend or partly suspend you for up to three months;

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- *require you to submit a written apology in a form specified by the Standards Committee;*
- *require you to undertake specified training;*
- *require you to undertake specified conciliation;*
- suspend or partly suspend you for up to three months on the condition that the suspension or partial suspension will end if you apologise in writing, receive any training or take part in any conciliation that the Standards Committee orders you to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee.

Sanctions may start immediately or up to six months after the hearing, if the Standards Committee wishes.

The Standards Committee will also arrange to publish a summary of its findings, reasons for its findings and any sanction set in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. If the Standards Committee finds that you have not broken the Code, you can ask the Standards Committee not to have this information published.

You have the right to apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding.

Breaches of a Local Code

If the Standards Committee decides that you have failed to follow a Local Code, and that you should be penalised, it may do any one or a combination of the following:

- offer advice;
- censure you;
- restrict your access to resources of the Authority;
- recommend to the Council that you are removed from a Committee.

Leeds City Council

Procedure for dealing with complaints of misconduct against Members of the Council - Annex B

Member's name:

FORM 1

Member's response to the evidence set out in the report

Please enter the number of any paragraph where you disagree with the findings of fact in the report, and give your reasons and your suggested alternative. **The Committee will not allow you to raise new disagreements over findings of fact in the report at the hearing unless there are good reasons for doing so.**

Paragraph number of the report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

Please attach separate sheets if necessary.

*Standards Committee – Procedure for dealing with complaint
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Signed (Member)

Date

Signed (Representative¹)

Date

¹ If you have a representative.

Leeds City Council

Procedure for dealing with complaints of misconduct against Members – Annex B

Member's name:

FORM 2

Other evidence relevant to the Complaint

Please set out below, using the numbered paragraphs, any other evidence you feel is relevant to the Complaint made about you.

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

Signed (Member)

Date

*Standards Committee – Procedure for dealing with complaint
of misconduct against Members of the Council*

Signed (Representative¹)

Date

¹ If you have a representative.

Leeds City Council

Procedure for dealing with complaints of misconduct against Members – Annex B

Member's name:

FORM 3

Representations to be taken into account if you are found to have failed to follow the Code of Conduct / a Local Code¹

Please set out below, using the numbered paragraphs, any factors that the Standards Committee should take into account if it finds that you have failed to follow the Code of Conduct / a Local Code².

Please note that no such finding has yet been made.

Paragraph number	Factors for the Standards Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension, <i>apology, training, or conciliation</i> ³
1	
2	
3	
4	
5	

Please attach separate sheets if necessary.

¹ Committee Clerk to delete as applicable.

² As above

³ As above

*Standards Committee – Procedure for dealing with complaint
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Signed (Member)

Date

Signed (Representative⁴)

Date

⁴ If you have a representative.

Leeds City Council

Procedure for dealing with complaints of misconduct against Members – Annex B

Member's name:

FORM 4

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

1	<p>The proposed date for the Standards Committee hearing is given in the letter sent to you with this form. Are you planning to go to the hearing?</p> <p>If "No", please explain why.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Reason:
2	<p>Are you going to present your own case?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
3	<p>If you are not presenting your own case, will a representative present it for you?</p> <p>If "Yes", please state the name of your representative.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Name:
4	<p>Is your representative a practising solicitor or barrister?</p> <p>If "Yes", please give his or her legal qualifications, then go to question 6.</p> <p>If "No", please go to question 5.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Qualifications:
5	<p>Does your representative have any connection with the case?</p> <p>If "Yes", please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Details:

Please attach separate sheets if necessary.

Leeds City Council

FORM 4 (continued)

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

6	<p>Do you want to call any witnesses?</p> <p>If "Yes", please fill in Form 5.</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	
7	<p>Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)?</p> <p>If "Yes", please give details.</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	Details:
8	<p>Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)?</p> <p>If "Yes", please give details.</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	Details:
9	<p>Do you want any part(s) of the hearing to be held in private?</p> <p>If "Yes", please</p> <ul style="list-style-type: none"> • identify which part(s); and • give reasons. 	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	<p>Part(s) you wish to be held in private:</p> <p>Reasons:</p>
10	<p>Do you want any part(s) of the relevant documents to be withheld from public inspection?</p> <p>If "Yes", please</p> <ul style="list-style-type: none"> • identify which documents • identify which part(s) of these documents; and • give reasons. 	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	<p>Documents:</p> <p>Part(s) of the documents you wish to be withheld from public inspection:</p> <p>Reasons:</p>

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Please attach separate sheets if necessary.

Signed.....(Member)

Date.....

Signed.....(Representative¹)

Date.....

¹ If you are represented

Leeds City Council

Procedure for dealing with complaints of misconduct – Annex B

Member’s Name:

FORM 5

Details of witnesses you want to ask to attend the hearing

Name of witness or witnesses	1	<p>.....</p> <p>.....</p>
	2	<p>.....</p> <p>.....</p>
	3	<p>.....</p> <p>.....</p>
<p>WITNESS 1</p> <p>(a) Will the witness give evidence about the Complaint?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	<p>Outline of evidence:</p>
<p>(b) Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct / a Local Code¹ has not been followed?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p>No</p> <p><input type="checkbox"/></p>	<p>Outline of evidence:</p>

Please attach separate sheets if necessary.

Leeds City Council

¹ Committee Clerk to delete as applicable

FORM 5(continued)

Details of witnesses you want to ask to attend the hearing:

<p>WITNESS 2</p> <p>(a) Will the witness give evidence about the Complaint? If "Yes", please provide an outline of the evidence the witness will give.</p> <p>(b) Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct / a Local Code² has not been followed? If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>Outline of evidence:</p>
<p>WITNESS 3</p> <p>(a) Will the witness give evidence about the Complaint? If "Yes", please provide an outline of the evidence the witness will give.</p> <p>(b) Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct / a Local Code³ has not been followed? If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>Outline of evidence:</p>

Please attach separate sheets if necessary.

² Committee Clerk to delete as applicable

³ As above

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Signed(Member) **Date**.....

Signed.....(Representative⁴)**Date**.....

⁴ If you are represented

Leeds City Council

Procedure for dealing with complaints of misconduct against Members – Annex C

Member's name:

Case Number¹:

FORM 6:

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

1	The proposed date for the Standards Committee hearing is given in the letter sent to you with this form. Are you planning to go to the hearing? If "No", please explain why.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Reason:
2	Are you going to present your own case?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
3	If you are not presenting your own case, will a representative present it for you? If "Yes", please state the name of your representative.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Name:
4	Do you want to call any witnesses? If "Yes", please fill in Form 7.	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Leeds City Council

¹ Referred Complaints only

FORM 6 (continued)

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

5	<p>Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)?</p> <p>If "Yes", please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Details:
6	<p>Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)?</p> <p>If "Yes", please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Details:
7	<p>Do you want any part(s) of the hearing to be held in private?</p> <p>If "Yes", please</p> <ul style="list-style-type: none"> • identify which part(s); and • give reasons. 	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Part(s) you wish to be held in private:</p> <p>Reasons:</p>
8	<p>Do you want any part(s) of the relevant documents to be withheld from public inspection?</p> <p>If "Yes", please</p> <ul style="list-style-type: none"> • identify which documents • identify which part(s) of these documents; and • give reasons. 	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Documents:</p> <p>Part(s) of the documents you wish to be withheld from public inspection:</p> <p>Reasons:</p>

Please attach separate sheets if necessary.

Signed.....

Date.....

Leeds City Council

Procedure for dealing with complaints of misconduct – Annex C

Member's Name:

Case Number¹:

FORM 7

Details of witnesses you want to ask to attend the hearing

Name of witness or witnesses	1	<p>.....</p> <p>.....</p>
	2	<p>.....</p> <p>.....</p>
	3	<p>.....</p> <p>.....</p>
WITNESS 1		
<p>(a) Will the witness give evidence about the Complaint?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <p style="text-align: center;"><input type="checkbox"/></p> <p>No</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Outline of evidence:</p>
<p>(b) Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct / a Local Code² has not been followed?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <p style="text-align: center;"><input type="checkbox"/></p> <p>No</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>Outline of evidence:</p>

¹ Referred Complaints only

² Committee Clerk to delete as applicable

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FORM 7 (continued)

Details of witnesses you want to ask to attend the hearing:

<p>WITNESS 2</p> <p>(a) Will the witness give evidence about the Complaint?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p> <p>(b) Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct / a Local Code³ has not been followed?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>Outline of evidence:</p>
<p>WITNESS 3</p> <p>(a) Will the witness give evidence about the Complaint?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p> <p>(b) Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct / a Local Code⁴ has not been followed?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Outline of evidence:</p> <p>Outline of evidence:</p>

³ Committee Clerk to delete as applicable

⁴ Committee Clerk to delete as applicable

*Standards Committee – Procedure for dealing with complaint
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Please attach separate sheets if necessary.

Signed

Date.....

Leeds City Council

Procedure for dealing with complaints against Members – Annex D

Checklist for the pre-hearing process summary

The pre-hearing process summary should include:

- the name of the Authority;
- the name of the Member;
- the name of the Complainant (unless the identity is being withheld in accordance with the Authority's Whistle Blowing Policy).
- case reference numbers of the principal Authority and the Standards Board for England¹;
- the name of the Chair;
- the name of the Monitoring Officer;
- the name of the Investigator²;
- the name of the Committee Clerk;
- the date the pre-hearing process summary was produced;
- the date, time and place of the hearing;
- a summary of the Complaint;
- the relevant section or sections of the Code of Conduct / Local Code³;
- the findings of fact in the report that are agreed;
- the findings of fact in the report that are not agreed;
- whether or not the Member or the Investigator will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- an outline of the proposed procedure for the hearing.

¹ For Referred Complaints

² For Referred Complaints for Determination this is the name of the ESO who referred the Complaint. For Referred Complaints for Investigation, this is the name of the Monitoring Officer or nominee.

³ As applicable

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Procedure for dealing with complaints of misconduct – Annex E

Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determinations by Standards Committees)

- 1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the Authority.
- 2 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:
 - (a) a magistrates' court committee;
 - (b) a probation committee within the meaning of the *Probation Service Act 1993*; or
 - (c) a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 2A Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 3 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the Authority.
- 4 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the Authority.
- 5 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the Authority.
- 6 Information relating to the adoption, care, fostering or education of any particular child.
- 7 Information relating to the financial or business affairs of any particular person (other than the Authority).
- 8 The amount of any expenditure proposed to be incurred by the Authority under any particular contract for the acquisition of property or the supply of goods or services.
- 9 Any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
- 10 The identity of the Authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

Leeds City Council

Annex E (Continued)

Categories of exempt information under Schedule 12A of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees)

- 11 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the Authority or a Minister of the Crown and employees of, or office-holders under, the Authority.
- 12 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:
 - (a) any legal proceedings by or against the Authority; or
 - (b) the determination of any matter, affecting the Authority.Whether in either case, proceedings have been commenced or are in contemplation.
- 13 Information which, if disclosed to the public, would reveal 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.
- 14 Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 15 The identity of a protected informant.
- 16 Information relating to the personal circumstances of any person.
- 17 Information which is subject to any obligation of confidentiality.
- 18 Information which relates in any way to matters concerning national security.
- 19 The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part III of the *Local Government Act 2000* in reaching any finding on a matter referred under the provisions of Section 60(2) or (3) and Section 64(2) of the *Local Government Act 2000*.

This is an extract from the *Local Government Act 1972* (as modified in relation to local determination by Standards Committees).

Leeds City Council

Procedure for dealing with complaints of misconduct against Members – Annex F

Excluding the public from hearings – Guidance

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, in line with Part VA of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees). If the Committee considers that "confidential information" is likely to be revealed during the hearing, the committee must exclude the public by law. "Confidential information" is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
- 2 The Committee also has the power to exclude the public if it considers that "exempt information" is likely to be revealed during the hearing. The categories of "exempt information" are listed in Annex E. The Committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee also has a duty to act fairly and in line with the rules of natural justice.
- 3 Article 6 says that the public **may** be excluded from all or part of the hearing if it is in the interests of:
 - (a) morals;
 - (b) public order;
 - (c) justice;
 - (d) national security in a democratic society; or
 - (e) protecting young people under 18 and the private lives of anyone involved.
- 4 There should be a public hearing unless the Committee decides that there is good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
- 5 The Committee must also act in line with 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".

Leeds City Council

Annex F (Continued)

Excluding the public from hearings – Guidance

6 The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:

(a) in line with the law; and

(b) necessary in a democratic society in the interests of:

i. national security;

ii. public safety;

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

7 Conflicting rights often have to be balanced against each other.

8 In relation to 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 in a democratic society". A measure will only be "necessary" if it meets "a pressing social need", and any restriction on people's rights must be "proportionate".

9 The Standards Board for England recommends that a Standards Committee should exclude the public when considering its decisions. The Board considers that this will not conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

LEEDS CITY AUTHORITY

Procedure for dealing with complaints of misconduct – Annex G

SANCTIONS

Referred Complaints

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

- offer advice;
- censure the Member. This is the only form of sanction available when dealing with a person who is no longer a member of the Authority;
- restrict the Member's access to the *premises or resources of the relevant Authority for up to three months, provided that the restrictions are reasonable and proportionate to the breach, and do not unduly restrict the Member's ability to perform his or her duties as a Member.*
- suspend or partly suspend the Member for up to three months;
- *require the Member to submit a written apology in a specified form;*
- *require the Member to undertake specified training;*
- *require the Member to undertake specified conciliation;*
- suspend or partly suspend the Member for up to three months on the condition that the suspension or partial suspension will end if the Member apologises in writing, receives any training, or takes part in any conciliation that the Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Committee.

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

Local Complaints

If the Committee decides that the Member has failed to follow a Local Code, and that he or she should be penalised, it may do any one or a combination of the following:

- offer advice;
- censure the Member;
- recommend to the Authority that the Member is removed from particular responsibilities e.g. a particular Committee; or
- restrict access to resources of the Authority.

Deciding a sanction

When deciding a sanction, the Committee should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what sanction to set, the Committee should consider the following questions, along with any other relevant circumstances.

*Standards Committee – Procedure for dealing with complaint
of misconduct against Members of the Council*

- What was the Member's intention? Did the Member know that he or she was failing to follow the Code?
- Did the Member get advice from officers before the incident? Was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code?
- How serious was the incident?
- Does the Member accept he or she was at fault?
- Did the Member apologise to the relevant people?
- Has the Member previously been warned or reprimanded for similar misconduct?
- Has the Member failed to follow the Code before?
- Is the Member likely to do the same thing again?

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

Suspension may be appropriate for more serious cases, such as those involving:

- bullying officers;
- trying to gain an advantage or disadvantage for themselves or others; or
- dishonesty or breaches of trust.

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

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

Any conciliation process should have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached during the process regarding future behaviour of the Member and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

When deciding on an appropriate sanction, the Committee may want to consider decisions made by other Standards Committees and case tribunals drawn from The Adjudication Panel for England that deal with similar types of cases.

LEEDS CITY COUNCIL

Procedure for dealing with complaints of misconduct against Members – Annex H

FULL WRITTEN DECISIONS

For consistency and thoroughness, the Committee will use the following format for its full written decision:

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

- the name of the Authority;
- the name of the Member;
- the name of the Complainant (unless there are good reasons for keeping his or her identity confidential);
- case reference numbers of the principal authority and The Standards Board of England;
- the name of the Committee Member who chaired the hearing;
- the names of the Committee Members who took part in the hearing;
- the name of the Monitoring Officer;
- the name of the Investigator¹;
- the name of the Legal Advisor and Committee Clerk
- the date of the hearing; and
- the date of the report.

The Committee's full written decision will include:

- a summary of the Complaint;
- the relevant section or sections of the Code of Conduct / Local Code
- a summary of the evidence considered and representations made;
- the findings of fact, including the reasons for them;
- the finding as to whether or not the Member failed to follow the Code of Conduct / Local Code, including the reasons for that finding;
- the penalties applied, if any, including the reasons for any penalties; and
- the right of appeal, including details of the postal and web site address for the Adjudication Panel. The appeal form produced by the Adjudication Panel (annex I to this procedure) will be attached to the decision.

¹ In respect of Referred Complaints *for Determination*, this will be the name of the ESO who referred the matter to the Monitoring Officer. *In respect of Referred Complaints for Investigation*, this will be the name of the Monitoring Officer or nominee.

LEEDS CITY COUNCIL

Procedure for dealing with complaints of misconduct against Members – Annex I

Application for permission to appeal

1	Your Name and Address	
2	Local Authority or other body of which you are a Member	
3	Date of Standards Committee Decision against which you seek to appeal <i>(The decision itself should be attached to this form)</i>	
4	Do you dispute that you failed to comply with the provisions of the Code of Conduct as determined by the Standards Committee	YES/NO <i>(if yes, please give your reasons)</i>
5	Do you wish to appeal against the sanction imposed by Standards Committee?	YES/NO <i>(if yes, please give your reasons)</i>

*Standards Committee – Procedure for dealing with complaint
of misconduct against Members of the Council*

6	If permission to appeal is granted do you agree to the Appeal being determined by way of written representations?	YES/NO
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Your signature

Print Name

Date

President's Decision:

Permission	Granted/Denied
Reason if permission refused:	

Signed

Date



REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

REPORT TO STANDARDS COMMITTEE

DATE : 25th NOVEMBER 2004

SUBJECT : Local Investigations of Complaints to the Standards Board

Electoral Wards Affected :

Specific Implications For :

- | | |
|-------------------|--------------------------|
| Ethnic Minorities | <input type="checkbox"/> |
| Women | <input type="checkbox"/> |
| Disabled People | <input type="checkbox"/> |

1.0 PURPOSE

1.1 To

- inform Members of new Regulations allowing Ethical Standards Officers to refer matters to Monitoring Officers for investigation;
- inform Members of new guidance issued by the Standards Board about local investigations;
- seek approval to amendments to the procedure for dealing with complaints of misconduct against Members; and
- inform Members of proposed consequential amendments to the Committee's Terms of Reference and the Access to Information Rules.

2.0 BACKGROUND

2.1 The Regulations

2.1.1 Under the provisions of Part III Local Government Act 2000, Ethical Standards Officers (ESOs) may carry out investigations into allegations that a Member has failed to comply with an authority's code of conduct. An ESO may choose to refer the report on the outcome of the investigation to the Monitoring Officer of the authority concerned for determination by its Standards Committee.

2.1.2 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (the 2003 Regulations) made provision about how Standards Committees should deal with reports referred by ESOs for local determination.

2.1.3 An ESO may also choose to refer to the Monitoring Officer an allegation prior to carrying out or concluding an investigation. The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 (the 2004 Regulations) came into force on the 4th November 2004. They amend the 2003 Regulations, to make provision about such investigations by Monitoring Officers and how Standards Committees should deal with reports subsequently prepared by Monitoring Officers.

2.2 Standards Board Guidance

2.2.1 On 1 November 2004, the Standards Board issued new guidance for Monitoring Officers about local investigations. A copy is attached for Members' information as Appendix 1 to this report.

2.2.2 Regulation 5(3)(d) of the 2004 Regulations provides that the Monitoring Officer must have regard to this guidance during conduct of his or her investigation.

2.3 Procedure for Dealing with Complaints of Misconduct against Members of the Council

2.3.1 In August 2003, the Standards Committee adopted a procedure for dealing with complaints of misconduct against Members, following the issue of the 2003 Regulations and Standards Board guidance. The procedure has subsequently been the subject of amendment, following consultation with Members and additional guidance issued by the Standards Board.

2.3.2 The Director of Legal and Democratic Services advises that the procedure now needs to be revised to cover allegations which have been referred to the Monitoring Officer for investigation in accordance with the 2004 Regulations. The proposed amended procedure is attached as Appendix 2 to this report. (Please note, the only annexes to the procedure attached as part of Appendix 2, are those which the Director advises need to be amended. The complete procedure is available for reference within the Constitution).

2.3.3 Proposed amendments which are required for compliance with the 2004 Regulations are indicated in italics on Appendix 2. Proposed amendments which incorporate relevant provisions from the guidance are underlined.

3 CRITERIA FOR REFERRAL FOR LOCAL INVESTIGATION

3.1 All allegations will in the first instance still go to the Standards Board who will decide whether or not there should be an investigation. The decision to refer a matter for local action rests with an ESO. An ESO may refer an allegation for local investigation at any point before he or she completes an investigation into the allegation. The guidance indicates that when deciding whether or not to refer the allegation to a Monitoring Officer, an ESO will use their discretion, and take into account all relevant circumstances.

3.2 The guidance sets out in more detail how an ESO will make a decision on whether or not to refer a matter. It states that an ESO is more likely to refer those cases in which

- 'the matter does not appear to need the heavier penalties available only to the Adjudication Panel for England;
- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an Ethical Standards Officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.'

3.3 The guidance adds that ‘the Ethical Standards Officer is unlikely to refer cases if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.’

4 THE 2004 REGULATIONS

The main provisions of the Regulations are as follows:

4.1 Role of the Monitoring Officer

4.1.1 The 2004 Regulations amend the definition of Monitoring Officer under the 2003 Regulations, to clarify that it includes any person nominated by the Monitoring Officer as deputy under section 5(7) Local Government Housing Act 1989, and any person nominated under the provisions of section 82 A (2) or (3) of the 2000 Act.

4.2 Disclosure of information

4.2.1 Section 63 Local Government Act 2000 limits the circumstances in which information obtained by an ESO during an investigation can be disclosed. Section 63 is further modified by the 2004 Regulations to provide that disclosure of information obtained by an ESO will not be prohibited if made for the purposes of enabling Monitoring Officers, Standards Committees and Appeal Tribunals to carry out their functions.

4.2.2 The guidance advises Monitoring Officers that ‘the information obtained by a Monitoring Officer during the course of a local investigation is not covered by section 63 of the Act, but you should treat this as confidential until your investigation is completed.’

4.3 Access to information

4.3.1 Under the Relevant Authorities (Standards Committee) 2001 Regulations, the deliberations of a Standards Committee in reaching its decisions following an ESO report are regarded as exempt and so can be held in private. The Committee are also entitled to exclude the press and public on the grounds of personal circumstances, obligations of confidentiality and national security.

4.3.2 The 2004 Regulations amend the 2001 Regulations so that they also apply where a case has been referred by an ESO to a Monitoring Officer for investigation.

4.4 Receipt of Complaint for investigation by a Monitoring Officer

4.4.1 Where a Monitoring Officer receives a matter referred by an ESO for investigation, the Monitoring Officer must, unless otherwise directed by the ESO, inform the Member who is the subject of the allegations, the complainant and any Parish Council concerned.

4.4.2 The Monitoring Officer must give the Member the opportunity to comment on the allegations.

4.5 Powers of Monitoring Officer in Conducting Investigations

Regulation 5 (4) of the 2004 Regulations gives the Monitoring Officer power to

- require the authority to provide such advice and assistance as the Monitoring Officer may reasonably need to assist him/her;
- require any of the authorities concerned, other than a Parish Council, to meet the cost of any advice and assistance provided, so far as such cost is reasonable;
- require the responsible authority to meet any costs incurred by a Parish Council, if any of the authorities concerned is a Parish Council, so far as such cost is reasonable; and
- require any of the authorities concerned to give the Monitoring Officer reasonable access to such documents in the possession of the authority as appear to be necessary for the purpose of conducting the investigation.

4.6 Referral back to ESO

4.6.1 Regulation 5(5) allows the Monitoring Officer conducting an investigation to make a request in writing to the ESO at any stage before completing the investigation, asking for the matter to be referred back to the ESO for investigation. The Monitoring Officer must give reasons for this request.

4.6.2 The guidance states that the circumstances in which a Monitoring Officer may do this include

- Evidence of further breaches; or
- Obstruction of an investigation.

4.6.3 The guidance also states that a Monitoring Officer can make such a request only once during the course of an investigation. It advises Monitoring Officers 'it is important to make sure you are satisfied that it is the correct course to take.'

4.7 Report of the Monitoring Officer

4.7.1 At the conclusion of an investigation, the Monitoring Officer must make one of following findings:

- Finding of failure to comply with the code of conduct;
- Finding of no failure.

4.7.2 S/he must prepare a written report concerning the investigation and findings, and send it to the Member concerned.

4.7.3 Where the finding is a finding of failure, the Monitoring Officer must refer the report to the Standards Committee for a hearing.

4.7.4 Where the finding is a finding of no failure, it must be referred to the Standards Committee who will then decide whether or not it agrees with that finding, or if it considers that there is case to answer. If the Standards Committee agrees with the Monitoring Officer's conclusion that there has been no failure then the Committee must give notice of that to

- the Member concerned;
- the ESO;

- any Relevant Parish Council; and
- the complainant.

4.7.5 In this situation, the Standards Committee must also arrange for a notice to be published in a local newspaper, unless the Member requests that it should not.

4.8 Hearings by Standards Committees

4.8.1 If the Monitoring Officer's report concludes that there was a finding of failure to comply with the code of conduct, or the Standards Committee have considered the report which concluded that there was a finding of no failure, but decided that there was a case to answer, the Standards Committee will have to convene to hear the matter.

4.8.2 Any hearing must be within 3 months of the date at which the Monitoring Officer completed the report, and not less than 14 days after the date the Monitoring Officer sent the report to the Member, unless the Member agrees to the hearing being held earlier.

4.9 Further Investigations

4.9.1 The Standards Committee may adjourn the hearing and ask the Monitoring Officer to seek further information or undertake further investigations on any specified point. The Standards Committee cannot adjourn the hearing more than once under this provision.

4.10 Referral back to ESO

4.10.1 The Standards Committee may also make a written request with reasons to the ESO, that the matter be referred back to the ESO for investigation. The guidance indicates that the Standards Committee may do this, for example, if it is considered that the sanctions available to it are not adequate for the situation.

4.11 Sanctions

4.11.1 The scope of the penalties which can be imposed by a Standards Committee have been expanded to provide for additional penalties and greater flexibility. These apply both in respect of cases investigated by the Monitoring Officer, and those investigated by the ESO and referred to the Standards Committee for local determination.

4.11.2 The new sanctions include requiring an apology, training or conciliation. A Standards Committee can impose any one or any combination of the sanctions. A revised list of the sanctions is set out in Annex G to the procedure.

4.12 Notification/appeals

4.12.1 The provisions relating to notification of Standards Committee findings, and appeals contained in the 2003 Regulations now apply to all cases determined by Standards Committee .

4.13 Directions from the ESO

4.13.1 Under Section 66(6) Local Government Act 2000, an ESO has power to direct a Monitoring Officer to deal with any matter referred otherwise than by conducting an investigation. The 2004 Regulations provide that a Monitoring Officer must deal with it in accordance with the direction, and submit a report to an Ethical Standards Officer

giving details of the action the Monitoring Officer has taken, or proposes to take to comply with the direction.

4.13.2 If an ESO is not satisfied with this, the ESO may require the Monitoring Officer to arrange for a statement to be published in a local paper giving details of the direction and the Monitoring Officer's reasons for not complying with it.

4.13.3 The guidance states that an ESO is most likely to give a direction 'in situations where the ESO considers that the case has broad relevance for the ethical governance of an Authority. The ESO may for example direct (the Monitoring Officer) to make recommendations to the Standards Committee about issues for the authority raised by the case, or ensure that the parties concerned attempt some form of reconciliation.'

5.0 PROPOSED AMENDMENTS TO THE PROCEDURE

5.1 As stated above, the proposed amendments to the procedure are set out in Appendix 2, and incorporate relevant issues referred to in paragraph 5 above, further to the 2004 Regulations.

5.2 Members are asked to note however, that the Director of Legal and Democratic Services is also recommending a change to the procedure for dealing with "Local Complaints". These are complaints that a Leeds City Council Member has breached a "Local Code" (which are defined under the procedure as including any of the authority's protocols or codes which refer to the conduct of Members, other than the code of conduct). Currently, on receipt of a report which concludes that a Member has not breached a Local Code, the Monitoring Officer may decide that no further action should be taken on it. Under the Regulations, however where a complaint has been referred *by an ESO* to the Monitoring Officer for investigation, and the report concludes that there has been no breach, it is for the Standards Committee to decide whether or not the matter should proceed for hearing. The Director proposes that this procedure should also be adopted in respect of Local Complaints, for consistency.

6.0 STANDARDS COMMITTEE TERMS OF REFERENCE / ACCESS TO INFORMATION RULES

6.1 Members are asked to note that the Director of Legal and Democratic Services proposes, under her delegated authority, to amend the Standards Committee's Terms of Reference to include determination of cases referred by an ESO and investigated by the Monitoring Officer.

6.2 In addition, she proposes to amend the Access to Information Procedure Rules where necessary to ensure that they reflect the updated legislation.

7.0 RECOMMENDATIONS

7.1 Members are asked to

- Note the guidance issued to Monitoring Officers in respect of local investigations;
- Note the provisions of the 2004 Regulations, implementing the local investigations framework;
- Approve the amendments set out in Appendix 2 to the procedure for dealing with complaints of misconduct against Members; and

- Note that the Director of Legal and Democratic Services proposes, under her delegated authority, to amend the Standards Committee's terms of reference and the Access to Information Rules to reflect the new legislation.

STANDARDS COMMITTEE - WORK PROGRAMME 2004/5

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES	DATE ENTERED INTO WORK PROGRAMME / SOURCE
<p>Meeting date: 27th January 2005 - The deadline for reports for this meeting is 14th January 2005</p>			
Code of Practice for Members Determining Licensing/Regulatory Matters	To receive and consider a report to outline a New current code of practice for members Determining Licensing and other Regulatory matters	<u>Lead Officer: Gill Marshall</u> Being Drafted by Legal and Democratic Services	June 2003 Standards Committee Request
Review of the Planning Code of Practice for Councillors	To receive and consider a report to outline amendments to the current code of practice for Councillors determining Planning Applications to reflect the LGA Probity in Planning publication	<u>Lead Officer: Robert Wade</u> To be amended in the light of the Richardson case and information from the Standards Board re partner councillors. To go to Plans panels prior to Standards Committee	
Review of the Role/Terms of Reference of Standards Committee	This report to outline any new guidance issued by the Standards Board for England and consider survey of other local authorities to establish if additional functions had been adopted + benefits of wider remit	<u>Lead Officers : Andy Hodson</u> Report drafted following consultation with other authorities. Discussions with Director of Corporate Services/Chief Officer (Audit & Risk) held early October	March 2004 Monitoring Officer Request
Committee on Standards in Public Life : Tenth Inquiry	Report on the outcome of the Committee's Inquiry into the processes for maintaining high standards of conduct in public life	<u>Lead Officer : Ella Anderson</u> Final Report not yet published Further hearings took place in October	May 2004

STANDARDS COMMITTEE - WORK PROGRAMME 2004/5

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES	DATE ENTERED INTO WORK PROGRAMME / SOURCE
Appointment of Parish Representative	To report on proposals for the appointment of a parish representative to the Committee, following interviews in Jan	<u>Lead Officer : Ella Anderson</u>	August 2004 Monitoring Officer Request
Adjudication Panel/Standards Board – Notable Recent Cases	To receive details of notable cases that have been determined and advise on the implications for Leeds.	<u>Lead Officer: Ella Anderson</u>	Regular Item Monitoring Officer Request
Guidance on Member Involvement in Companies and Trusts	To receive and approve guidance for Elected Members nominated to serve in an official capacity on Companies and Trusts	<u>Lead Officer : Pat Kelly</u> To be reviewed in the light of Charity Commission guidance/Plain English accreditation	October 2003 Monitoring Officer Request
<p>Meeting date: 31st March 2005 - The deadline for reports for this meeting is 17th March 2005</p>			
Standards Board Hyperlink	To receive a report on the outcome of the six-month trial period following the addition of the hyperlink to the Council's website	<u>Lead Officer : Liz Davenport</u>	Standards Committee request
Adjudication Panel/Standards Board – Notable Recent Cases of Misconduct	To receive details of notable cases that have been determined and advise on the implications for Leeds.	<u>Lead Officer: Ella Anderson</u>	Regular Item Monitoring Officer Request

STANDARDS COMMITTEE - WORK PROGRAMME 2004/5

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES	DATE ENTERED INTO WORK PROGRAMME / SOURCE
<p>Meeting date: 12th May 2005 - The deadline for reports for this meeting is 29th April 2005</p>			
Adjudication Panel/Standards Board – Notable Recent Cases of Misconduct	To receive details of notable cases that have been determined and advise on the implications for Leeds.	<u>Lead Officer: Ella Anderson</u>	Regular Item Monitoring Officer Request

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES
<p><u>Unscheduled</u></p>		
Annual report of the Monitoring Officer	To receive and consider the annual report of the Monitoring Officer	<u>Lead Officer: Nicole Jackson</u> Report with outcome of the review in preparation
Code of practice for Members Use of IT	Report detailing the review of the code of practice	<u>Lead Officer: Mark Turnbull</u> Being Drafted by Legal and Democratic Services

STANDARDS COMMITTEE - WORK PROGRAMME 2004/5

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES
<u>Unscheduled</u>		
Officer Code of Conduct	Approval of a revised Leeds City Council Officer Code of Conduct following receipt of the Model Code.	<u>Lead Officer: Nadim Asghar (Personnel)/Liz Davenport</u> Draft Officer Code of Conduct now published by the ODPM for consultation
Parish Sub-Committee	To review the possibility of establishing a Parish Sub-Committee after 12 months or sooner if the need arises	<u>Lead Officer – Liz Davenport</u> Report required July 2005
Changes to the Code of Conduct	To give further consideration to potential changes to the code following discussions between the Association of County Secretaries and Solicitors and the Standards Board for England Views of party group whips and parish councillors to be sought	<u>Lead Officer : Stuart Turnock</u> Formal consultation to be issued by the Standards Board for England in Sept/Oct
Pre-Determination	To present advice from the Standards Board for England on issues relating to Pre-Determination matters.	<u>Lead Officer: Liz Davenport</u> To be drafted. Currently awaiting advice from Standards Board for England