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## STANDARDS COMMITTEE

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Meeting to be held in Civic Hall, Leeds, LS1 1UR on  
Thursday, 15th October, 2009  
at 2.00 pm

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### MEMBERSHIP

#### Independent Members

Mike Wilkinson (Chair)	(Independent Member)
Joanne Austin	(Independent Member)
Rosemary Greaves	(Independent Member)
Philip Turnpenny	(Independent Member)
Gordon Tollefson	(Reserve Independent Member)

#### Councillors

D Blackburn  
C Campbell  
JL Carter  
RD Feldman  
R Gettings  
J Harper  
B Selby

#### Parish Members

Councillor Mrs P Walker	Pool in Wharfedale Parish Council
Councillor John C Priestley	East Keswick Parish Council
Councillor Paul Cook	Morley Town Council

# A G E N D A

Item No	Ward	Item Not Open		Page No
1			<p><b>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</b></p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Chief Democratic Services Officer at least 24 hours before the meeting)</p>	
2			<p><b>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</b></p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p><b>RESOLVED –</b> That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:-</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p><b>LATE ITEMS</b></p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p><b>DECLARATION OF INTERESTS</b></p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct</p>	
5			<p><b>MINUTES OF THE PREVIOUS MEETING</b></p> <p>To approve the minutes of the Standards Committee meeting held on 19<sup>th</sup> August 2009.</p>	1 - 4
6			<p><b>MINUTES OF THE ASSESSMENT SUB-COMMITTEE</b></p> <p>To note the minutes of the Assessment Sub-Committee meetings held on 14<sup>th</sup> August, 27<sup>th</sup> August and 21<sup>st</sup> September 2009.</p>	5 - 12
7			<p><b>MINUTES OF THE REVIEW SUB-COMMITTEE</b></p> <p>To note the minutes of the Review Sub-Committee meeting held on 14<sup>th</sup> August 2009.</p>	13 - 14
8			<p><b>POLITICALLY RESTRICTED POSTS</b></p> <p>To receive a report of the Chief Officer (Human Resources) providing further information and clarification in relation to Politically Restricted Posts, as requested by the Standards Committee at its meeting held on 19<sup>th</sup> August 2009.</p>	15 - 28

Item No	Ward/Equal Opportunities	Item Not Open		Page No
9			<p><b>OFFICER CODE OF CONDUCT</b></p> <p>To receive a report of the Chief Officer (Human Resources) informing Members of the current position on the proposed national Officer Code of Conduct, and proposed amendments to Leeds City Council's Officer Code of Conduct.</p>	29 - 54
10			<p><b>CODE OF PRACTICE FOR THE DETERMINATION OF LICENSING MATTERS</b></p> <p>To receive a report of the Assistant Chief Executive (Corporate Governance) recommending that the Code of Practice for the Determination of Licensing Matters is amended to include the Protocol for Licensing Site Visits.</p>	55 - 74
11			<p><b>STANDARDS COMMITTEE PROCEDURE RULES</b></p> <p>To receive a report of the Assistant Chief Executive (Corporate Governance) asking the Committee to approve the proposed amendments to the Standards Committee Procedure Rules.</p>	75 - 116
12			<p><b>PROCEDURE FOR EXTERNAL CODE OF CONDUCT INVESTIGATIONS</b></p> <p>To receive a report of the Assistant Chief Executive (Corporate Governance) notifying Members of the Standards Committee of a procedure for external Code of Conduct investigations which has recently been drafted.</p>	117 - 190
13			<p><b>COMPULSORY TRAINING FOR MEMBERS OF STANDARDS COMMITTEE</b></p> <p>To receive a report of the Assistant Chief Executive (Corporate Governance) proposing the introduction of compulsory training in relation to the local assessment regime for Members of the Standards Committee.</p>	191 - 202

Item No	Ward/Equal Opportunities	Item Not Open		Page No
14			<p><b>ADJUDICATION PANEL FOR ENGLAND: DECISIONS OF CASE TRIBUNALS</b></p> <p>To receive a report of the Assistant Chief Executive (Corporate Governance) providing summaries of recent decisions made by the Adjudication Panel for England in its role of determining allegations of misconduct.</p>	203 - 230
15			<p><b>STANDARDS COMMITTEE WORK PROGRAMME</b></p> <p>To receive a report of the Assistant Chief Executive (Corporate Governance) outlining the contents of the draft work programme for the remainder of the 2009/10 municipal year.</p>	231 - 238

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# Agenda Item 5

## Standards Committee

Wednesday, 19th August, 2009

### PRESENT:

#### Independent Members

Mike Wilkinson (Chair) (Independent Member)  
Joanne Austin (Independent Member)  
Rosemary Greaves (Independent Member)  
Philip Turnpenny (Independent Member)

#### Councillors

D Blackburn R D Feldman J Harper  
C Campbell B Gettings

#### Parish Members

Councillor Mrs P Walker Pool in Wharfedale Parish Council  
Councillor John C Priestley East Keswick Parish Council  
Councillor Paul Cook Morley Town Council

### APOLOGIES:

Mr G Tollefson and Councillor J L Carter

#### **20 Appeals against refusal of inspection of documents**

There were no appeals against refusal of inspection of documents in accordance with Procedure Rule 25 of the Access to Information Procedure Rules.

#### **21 Exempt Information - Possible Exclusion of the Press and Public**

There were no resolutions to exclude the public.

#### **22 Late items**

There were no late items submitted to the agenda by the Chair for consideration, however supplementary information had been circulated in relation to items 10 and 11, as the reports were not complete at the time of the agenda dispatch.

#### **23 Declaration of interests**

There were no declarations of personal/prejudicial interests for the purpose of section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct.

**24 Minutes of the previous meeting**

The minutes of the Standards Committee meeting held on 8<sup>th</sup> July 2009 were approved as a correct record.

Further to Minute 14, Members were informed that a response had been received from the Department for Communities and Local Government, which would be reported to the next meeting of the Standards Committee.

Further to Minute 17, Members were informed that individual letters and guidance packs were due to be sent to the relevant Parishes by the end of August 2009.

**25 Minutes of the Assessment Sub-Committee**

The minutes of the Assessment Sub-Committee meetings held on 25<sup>th</sup> June, 8<sup>th</sup> July and 13<sup>th</sup> July 2009 were received and noted.

**26 Minutes of the Review Sub-Committee**

The minutes of the Review Sub-Committee meeting held on 13<sup>th</sup> July 2009 were received and noted.

**27 Minutes of the Corporate Governance and Audit Committee**

The minutes of the Corporate Governance and Audit Committee meetings held on 30<sup>th</sup> June and 29<sup>th</sup> July 2009 were received and noted.

Further to Minute 8, Members discussed the reasons why the Corporate Governance and Audit Committee had requested further information in relation to how many Councillors had been complained about and how many complaints had been received per ward, and whether Local Assessment training would be made compulsory for Standards Committee members.

**28 Amendments to the Standards Committee Terms of Reference**

The Senior Corporate Governance Officer presented a report of the Assistant Chief Executive (Corporate Governance) notifying the Standards Committee of the consequential amendments to the Standards Committee Terms of Reference which had been made arising from:

- the resolutions of the Standards Committee on 8<sup>th</sup> July 2009;
- amendments to the Local Government and Housing Act 1989; and
- the implementation of the Standards Committee (Further Provisions) (England) Regulations 2009.

**RESOLVED** – Members of the Standards Committee resolved to note the amendments to the Standards Committee Terms of Reference as attached at Appendix 1 to the report.

**29 Standards Committee Procedure: Politically Restricted Posts**

The Human Resources Manager presented a report of the Chief Officer (Human Resources) setting out a draft procedure for the consideration of Politically Restricted Posts (PRPs) for use by the Standards Committee, in accordance with the Local Government and Housing Act 1989 (as amended by the Local Government and Public Involvement in Health Act 2007).



Some Members welcomed this process, as it would provide more local flexibility and would allow the decisions to be made by a Committee rather than a single person (the Independent Adjudicator) as was previously the case.

Members were concerned that there were certain issues in relation to the procedure that required further consideration, and requested that a report be submitted to the next Standards Committee meeting addressing the following points:

- Whether a Sub-Committee should be set up to consider requests in relation to PRPs;
- The need for clarification of the process regarding requests by Directors or members of the public that a post be added to the list of PRPs;
- The need for there to be a centrally maintained list of the posts in each category of restriction;
- The process and responsibility for reviewing and monitoring the list;
- A description of how the question of political restriction was dealt with as part of the Council's recruitment process;
- The need for the status of posts, be they politically restricted or exempt to be reviewed, should the Job Description be amended; and
- Whether any form of appeal exists in relation to the Standards Committee's decision.

Members also agreed that officers should write to the Department for Communities and Local Government to ask why guidance had not been provided in relation to this procedure.

**RESOLVED** – Members of the Standards Committee resolved to:

- (a) Adopt the procedure for the consideration of Politically Restricted Posts, as attached at Appendix 1 to the report;
- (b) Request that officers write to the Department for Communities and Local Government to ask why guidance has not been provided in relation to this process; and
- (c) Request that a report be submitted to the next meeting of the Standards Committee addressing the issues listed above.

### **30 Application for exemption from the list of politically restricted posts**

The Head of Renaissance Unit presented a report of the Director of City Development seeking exemption for the Economic Policy and Information Manager from the list of Politically Restricted Posts which is maintained by the authority under the Local Government and Housing Act 1989.

After being informed of the main duties of the post, Members discussed the following points:

- The reasons why exemption was being sought for this post;
- The potential legal implications of seeking exemption following a recruitment exercise for a particular post;

- The need for the information provided in application packs in relation to PRPs to be reviewed in order to ensure that this is clear;
- The need for further consideration to be given to the process of assessing whether posts should be added to/removed from the list if the Job Description is amended, and how to ensure that managers are aware of and understand this process;
- What action would be taken should an exempt post be added to the list following an amendment to the Job Description, and which is currently filled by a post holder who would breach the conditions of a Politically Restricted Post; and
- The need for further consideration to be given to the potential implications should a post that is granted an exemption have direct reports that are restricted, and in relation to providing holiday/maternity cover for restricted posts.

Members noted that the Job Description of the Economic Policy and Information Manager includes responsibilities in relation to working with and advising elected Members. Members were advised that, according to advice previously provided by the Independent Adjudicator, this would need to include giving advice on a regular basis to the authority itself, i.e. to full Council or a Council Committee, or the Executive, Executive Member or a Committee of the Executive in order to fall under the terms of a PRP. It was confirmed that this post would not involve reporting on a regular basis to Council Committees or the Executive.

**RESOLVED** – Members of the Standards Committee resolved to:

- (a) Grant an exemption for the post of Economic Policy and Information Manager from the list of Politically Restricted Posts; and
- (b) Request that the points noted above are also addressed in the report to be submitted to the next Standards Committee meeting, as requested under Minute 29(c).

### **31 Standards Committee Work Programme**

The Assistant Chief Executive (Corporate Governance) submitted a report notifying Members of the Committee of the work programme for the remainder of the municipal year, and seeking comments from the Committee regarding any additional items.

**RESOLVED** – Members of the Standards Committee resolved to note the work programme.

# Agenda Item 6

## Standards Committee - Assessment Sub-Committee

Friday, 14th August, 2009

### PRESENT:

#### Independent Members

Philip Turnpenny (Chair) Independent Member

#### Councillors

D Blackburn

#### Parish Members

Councillor John C Priestley

### 7 Declarations of Interests

There were no declarations of personal/prejudicial interests for the purpose of section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct.

### 8 Case Reference 0910001(2)

The Monitoring Officer submitted the above complaint to the Assessment Sub-Committee for consideration.

**RESOLVED** – The Assessment Sub-Committee resolved:

- That the subject Member may have breached the Code of Conduct through one of the alleged incidents but there was no further potential breach of the Code of Conduct disclosed by the remainder of the complaint;
- To refer part of the complaint to the Monitoring Officer for local investigation; and
- To take no further action on the remainder of the complaint.

### 9 Case Reference 0910003

The Monitoring Officer submitted the above complaint to the Assessment Sub-Committee for consideration.

**RESOLVED** – The Assessment Sub-Committee resolved:

- That there was no potential breach of the Code of Conduct disclosed by the complaint; and
- To take no further action on the allegations.

**10 Case Reference 0910004**

The Monitoring Officer submitted the above complaint to the Monitoring Officer for consideration.

**RESOLVED** – The Assessment Sub-Committee resolved:

- That the subject Member may have breached the Code of Conduct through one of the alleged incidents but there was no further potential breach of the Code of Conduct disclosed by the remainder of the complaint;
- To refer part of the complaint to the Monitoring Officer for local investigation; and
- To take no further action on the remainder of the complaint.

**11 Case Reference 0910005**

The Monitoring Officer submitted the above complaint to the Assessment Sub-Committee for consideration.

**RESOLVED** – The Assessment Sub-Committee resolved:

- That the subject Member may have potentially breached the Code of Conduct in all the circumstances of the complaint; and
- To refer all the allegations in the complaint to the Monitoring Officer for local investigation.

## Standards Committee - Assessment Sub-Committee

Thursday, 27th August, 2009

### PRESENT:

#### Independent Members

Mike Wilkinson (Chair)

#### Councillors

R D Feldman          B Selby

#### Parish Members

Councillor    John    C  
Priestley

### **12    Appeals against refusal of inspection of documents**

There were no appeals against refusal of inspection of documents in accordance with Procedure Rule 25 of the Access to Information Procedure Rules.

### **13    Exempt Information - Possible Exclusion of the Press and Public**

**RESOLVED** – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:-

The final reports and bundles of evidence of the investigating officer in relation to investigations into complaints against Members, referred to under Minute 16 and 17, which are classified as exempt under Access to Information Procedure Rule 10.4 (7c). Members agreed that the public interest in maintaining the exemption at this stage of the process, namely the consideration function, outweighed the public interest in disclosing the information.

### **14    Late Items**

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

## **15 Declarations of Interests**

No declarations of interest were made at this point, however a declaration was made at a later point in the meeting (Minute 17 refers).

## **16 Final Investigation Report - Case Reference 0809001**

The Assistant Chief Executive (Corporate Governance) submitted a report setting out the findings of the Investigating Officer in a Code of Conduct investigation into a complaint against a Member. The investigation followed the submission of a complaint to the Assessment Sub-Committee, who had resolved to refer part of the complaint for investigation.

Appendix 1 to the report was designated as exempt under Access to Information Procedure Rule 10.4 (7c).

The Investigating Officer was present at the meeting to present her findings and to respond to any questions from Members.

Members agreed that the Councillor had not been acting in his official capacity at the time of the incident. Members therefore agreed to accept the Investigating Officer's finding that there had been no failure to comply with the code of conduct.

Members then considered whether they wished to make any recommendations to the relevant authority as a result of the complaint and investigation. The Committee asked the Monitoring Officer to discuss the matter further with the Member concerned.

**RESOLVED** – Members of the Standards Committee resolved to accept the Investigating Officer's finding of no failure.

## **17 Final Investigation Report - Case Reference 0809008**

Councillor Priestley declared a personal and prejudicial interest in this item, as the complainant is a former close personal associate. He withdrew from the meeting for this item and took no part in the discussion or vote.

The Assistant Chief Executive (Corporate Governance) submitted a report setting out the findings of the Investigating Officer in a Code of Conduct investigation into a complaint against a Member. The investigation followed the submission of a complaint to the Assessment Sub-Committee, who had resolved to refer part of the complaint for investigation.

Appendix 1 to the report was designated as exempt under Access to Information Procedure Rule 10.4 (7c).

The Investigating Officer was present at the meeting to present her findings and to respond to any questions from Members.

Members agreed that through her actions, the Councillor had not brought her office or authority into disrepute. Members therefore agreed to accept the Investigating Officer's finding that there had been no failure to comply with the code of conduct.

Members then considered whether they wished to make any recommendations to the relevant authority as a result of the complaint and investigation. The Committee asked the Monitoring Officer to follow up the following issues:

- The level of formality expected between Members and officers;
- The need for the process of removing comments from the planning file to be available in writing and to be explained in the relevant sections of the planning website and of any printed guidance;
- The process regarding whether draft Plans Panels reports should be made available, and the need for planning officers to be aware of and understand any such procedure;
- The need for Code of Conduct training to be undertaken by the Member concerned.

**RESOLVED** – Members of the Standards Committee resolved to accept the Investigating Officer's finding of no failure.

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## Standards Committee - Assessment Sub-Committee

Monday, 21st September, 2009

### PRESENT:

#### Independent Members

Mike Wilkinson (Chair)

#### Councillors

J Harper                      B Gettings

#### Parish Members

Councillor Mrs P Walker

### 18     **Declarations of Interests**

There were no declarations of personal/prejudicial interests for the purpose of section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct.

### 19     **Case Reference 0910006**

The Monitoring Officer submitted the above complaint to the Assessment Sub-Committee for consideration.

**RESOLVED** - The Assessment Sub-Committee resolved:

- That there was no potential breach of the Code of Conduct disclosed by the complaint; and
- To take no further action on the allegations.

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# Agenda Item 7

## Standards Committee - Review Sub-Committee

Friday, 14th August, 2009

### **PRESENT:**

#### Independent Members

Philip Turnpenny (Chair) Independent Member

#### Councillors

D Blackburn R D Feldman

### **5 Declarations of Interest**

There were no declarations of personal/prejudicial interests for the purpose of section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct.

### **6 Case Reference 0809014(iii)**

The Monitoring Officer submitted a review request in relation to part of the above complaint to the Review Sub-Committee for consideration. The complaint was originally considered by the Assessment Sub-Committee on 21<sup>st</sup> April 2009.

**RESOLVED** – The Review Sub-Committee resolved:

- That there was no potential breach of the Members' Code of Conduct disclosed by this part of the complaint; and
- To take no further action on the allegations.

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**Report of the Chief Officer (Human Resources)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Politically Restricted Posts**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**Executive Summary**

1. This report follows the last meeting of the Standards Committee, where arrangements for exempting politically restricted posts were considered. Following a request for further information and clarification, this report:
  - (a) sets out further work that is being undertaken to maintain and review the list of politically restricted post, and provide assurances about this;
  - (b) provides other information around a number of specific points raised by the Standards Committee, including recruitment; and
  - (c) re-examines process issues affecting the consideration of applications for inclusion and exemption on the list of politically restricted posts.

## **1.0 Purpose of this Report**

- 1.1 On 19 August 2009 the Standards Committee met and noted constitutional amendments to give effect to a statutory change making local Standards Committees responsible for:
- (a) granting exemptions from inclusion on the list of Politically Restricted Posts maintained by each Local Authority; and
  - (b) considering applications to have posts added to that list.
- 1.2 The Standards Committee also adopted a process for considering such applications for exemption, or inclusion, and heard its first application for an exemption. A number of points of clarification were raised and this report responds to these.

## **2.0 Main Issues**

### Maintaining the list of politically restricted posts

- 2.1 Local Authorities must maintain a list of Politically Restricted Posts (“the List”). In Leeds the responsibility for maintaining the List is assigned to the Chief Officer (HR). It is, however, the duty of individual directors to identify posts and take action to ensure they are appropriately added to the List.
- 2.2 In practice, the majority of posts are identified by their annual rate of remuneration. Within this, posts that cannot be exempted are identified within the Constitution. These are listed in Article 12 of the Constitution.
- 2.3 Following the last meeting of the Standards Committee, each Directorate has been contacted to explain what the new processes are for considering exemptions. Likewise, Directorates have also been requested to ensure that any “sensitive” posts where annual rates of remuneration is under scp 44 are identified.
- 2.4 Work is also underway to establish how this information can be incorporated into the Council’s HR computer system. In the interim, the Chief Officer (HR) will maintain a list of exempted posts (currently only one post) and a list of other Politically Restricted Posts.
- 2.5 Attached at Appendix 1 is the current list of posts, updated for this meeting. If desired, this can be presented to the Committee on an annual basis. In terms of assurances that the list is properly compiled, a number of arrangements are in place to check for changes in duties and grade which are described next. The Chief Officer (HR) will instruct local HR teams to actively monitor this to support Directors and independently check this via the Corporate HR team.

### Adding posts to the List

- 2.6 Aside from a formal application to the Standards Committee, there are various ways posts can be added to the List. This would include circumstances where the duties or remuneration of a post change, including temporary changes. Further clarification on these points was requested.
- 2.7 Permanent changes in grade or duties will occur for a variety of reasons e.g. through restructures. HR teams which support Directorates have been reminded to ensure that

where changes are proposed, the implications for political restrictions are taken into account. This will include:

- (a) checking for changes in job descriptions
- (b) changes triggered by grade changes.

- 2.8 Checking for changes in job descriptions will also be incorporated into the Pay and Grading Review, where any issues that relate to sensitive activity can be identified by Job Evaluators.
- 2.9 In these circumstances, postholders will be informed that their contract of employment has changed and that by virtue of their rate of remuneration, or revised duties that their post is politically restricted.
- 2.10 Potentially when such changes occur, an existing postholder who is engaged in defined politically activity may be affected. There would be process of consultation about the need for changes and options explored to deal with any possible impact. Included within this would be the option to request an exemption from the Standards Committee; e.g. if a post became graded above scp 44.
- 2.11 As well as permanent changes, attention will also be given to temporary changes. If staff act-up into any post that is politically restricted they would be notified that restrictions will apply. Likewise where staff receive other payments that bring them above the scp 44 threshold, they will be tracked and added to the list.
- 2.12 As well as these formal changes, some officers will be required to deputise for politically restricted postholders. This would potentially include undertaking "sensitive duties". Whether or not restrictions should be put in place, would depend upon how regularly this happened. Previously the Independent Adjudicator made reference to this point and suggested posts could be exempted if sensitive duties were not a regular requirement of the post.
- 2.13 As a consequence Directorates have been asked to identify if there are any potential circumstances where staff are also likely to have deputising roles which could regularly involve in advising committees or press activity. As an example the Committee asked about holiday and maternity cover. It would be unlikely that cover for holidays would be seen as a regular requirement. However, maternity cover could lead to a deputy regularly undertaking sensitive duties; although it is likely that this would be addressed as a formal acting-up situation.

### Recruitment Issues

- 2.14 In the past, posts have been advertised without reference to any political restriction that would apply. To make this clearer, the Business Support Centre, which manages the administration of recruitment, has been asked to ensure that information given to candidates states where a restriction would apply. Likewise, the Councils' Recruitment Codes of Practice will be updated to ensure that the arrangements for seeking exemptions is communicated to candidates.
- 2.15 In providing this information for candidates, there is a potential that job applicants seek exemptions before a recruitment process is completed. Previously, the Independent Adjudicator had determined that any requests for an exemption could only be made by an existing postholder, or a preferred candidate to whom a job had been offered. It is therefore proposed that Directors are also informed that any applications for

exemptions are only made where this relates to a preferred candidate, with a job offer. As a consequence, the Standards Committee will not need to consider prospective candidates from seeking exemption which may only be speculative and not best use of their time.

- 2.16 In terms of any employment law issues that may apply, it is felt that taking such a position would not disadvantage one candidate over another. All candidates would have the same opportunity to discuss the implications of a politically restricted post and, if offered, a post, apply for an exemption. If an exemption were not granted by the Standards Committee, a preferred candidate would either have to withdraw their application or decide to refrain from defined political activity.

#### Refining the Process For Considering Exemptions

- 2.17 At the request of the Standards Committee the DCLG has been written to seeking advice on why guidance has not been given to support Standards Committees undertaking this new duty.
- 2.18 Like other Councils Leeds has had to develop its own procedure. A number of issues were raised about this.
- 2.19 Members asked whether or not an appeals process should be created. The Committee is asked to note that legally there is no requirement to do this. Likewise under the previous arrangements with the Independent Adjudicator appeals were not heard. However, the Committee would be able to reconsider any applications if there has been a material change in circumstances or new information is available.
- 2.20 Members asked whether the Standards Committee could create a sub-committee to consider applications for exemption from politically restricted posts. The draft terms of reference for such a proposed Politically Restricted Posts Sub-Committee are attached as Appendix 2. Members of the Standards Committee are asked to approve these terms of reference. The creation of a Politically Restricted Posts Sub-Committee will also require consequential amendments to the Standards Committee Terms of Reference and Article 9 of the Constitution, which can be approved by the Assistant Chief Executive (Corporate Governance) via a delegated decision.
- 2.21 The Standards Committee (and any Sub-Committee of the Standards Committee), must be composed of at least three people, including at least two Members of the authority and one Independent Member. Officers have identified three possible compositions as follows:

#### **Option 1**

- 1 Independent Member (who would Chair the Sub-Committee)
- 2 Leeds City Councillors
- 1 Parish Member (who would not be required to attend for the meeting to be quorate)

#### **Option 2**

- 2 Independent Members (one of whom would Chair the Sub-Committee)
- 2 Leeds City Councillors
- 1 Parish Member (who would not be required to attend for the meeting to be quorate)



### **Option 3**

- 1 Independent Member (who would Chair the Sub-Committee)
- 2 Leeds City Councillors

2.22 Option one mirrors the composition of the Assessment and Review Sub-Committees, whilst option two is the same composition as the Hearings Sub-Committee agreed in July 2009. The advantage of option three would be that it would be more likely that the full membership of the Sub-Committee could be achieved at short notice. However should a Member become aware of a personal and prejudicial interest during the meeting, or not be able to attend for some reason, the meeting would become inquorate. Members of the Standards Committee are asked to confirm which of the compositions they would prefer.

2.23 Finally to reflect on any lessons learnt after hearing the first case more preparatory work will be done by HR. This includes simplifying documentation to avoid repetition and ensuring applications focus on the duties postholders have to undertake.

### **3.0 Legal and Resource Implications**

3.1 Arrangements and assurances for maintaining the list of politically restricted posts have been given following questions raised by the Committee at its previous meeting. These are intended to give the Committee the support it needs to discharge its functions in this area.

### **4.0 Recommendations**

4.1 The Standards Committee is asked to:

- Note answers to the questions raised at its previous meeting;
- Approve the terms of reference for the Politically Restricted Posts Sub-Committee (attached as Appendix 2); and
- Confirm which of the options it prefers for the Politically Restricted Posts Sub-Committee.

#### Background Documents:

Independent Adjudicators Letter to Local Authority Chief Executives 2002

Reports to Standards Committee August 2009

“The Role and Make Up of Standards Committee” by Standards for England

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Category A Positions		If more than one number of posts		
Assistant Chief Executive (PPI)				
Assistant Chief Executive (Corporate Governance)				
Chief Executive				
Chief Highways Officer				
Chief Officer Housing Services				
Chief Officer Access and Inclusion				
Chief Officer Children & Young People SC				
Chief Officer Early Years & Youth Service				
Chief Officer Environmental Services				
Chief Officer Learning Disabilities				
Chief Officer Support and Enablement				
Chief Planning Officer				
Chief Recreation Officer				
Chief Officer Regeneration				
Deputy Chief Executive				
Deputy Director				
Director Adult Social Services				
Director of Children's Services	x2			
Director of City Development				
Director of Environment & Neighbourhoods				
Director of Resources				
Chief Officer Legal, Licens & Reg Svcs				
Chief Libraries, Arts & Heritage Officer				
Chief Officer (Customer Services)				
Chief Democratic Services Officer				
Category B Positions	If more than one number of posts	Category B Positions	If more than one number of posts	
Adaptations Manager		Benefits Manager		
Administration Manager	x2	Benefits Manager Visits & Security		
Adult Commissioning Manager		Bridges Manager		
Adult Protection Co-Ordinator	x2	Building Standards Manager	x3	
Advertising Initiative Manager		Building Standards Surveyor	x5	
Affordable Housing Delivery Manager		Building Surveyors Assistant Manager		
Applications Manager		Business Change & Support Officer		
Area Community Safety Co-ordinator	x5	Business Change Leader		
Area Community Support Manager	x2	Business Change Manager	x4	
Area Management Officer East North East	x3	Business Change Project Manager		
Area Management Officer South East	x3	Business Continuity Manager		
Area Management Officer West North West	x5	Business Development Manager		
Area Manager East North East		Business Improvement Manager		
Area Manager South East		Business Liaison Manager		
Area Manager West North West		Business Liaison Officer	X2	
Area Planning Manager	x4	Business Manager	X2	
Area Planning Manager	x2	Business Manager Asbestos		
Area Renewal Manager		Business Manager Cleaning		
Arts Arena Reader Development Manager		Business Manager Demolition		
Assessment Team Manager		Business Manager Electrical		
Assistant Commissioning Manager	x2	Business Manager Gas		
Assistant Development & Support Manager		Business Manager Heating		
Assistant Exchequer Services Manager		Business Manager Lifts & Workshop		
Assistant Head of Payroll Services		Business Manager Planned & Flooring		
Assistant Recovery Manager	x2	Business Process Re-Engineering Manager		
Assistant TDA	x2	Business Rate Manager		
Asst Sys Development & Support Manager		Business relationship Manager	X5	
Audit Manager	x2	Business Support Manager		
Category B Positions	If more than one number of posts	Category B Positions	If more than one number of posts	
Capital Investment Manager (Sport)		Community Issues Officer		
Catering Manager		Community Liaison Manager		
CCTV Operations Manager		Complaints Manager		
Centre Manager		Compliance Manager	X2	
Change Manager - Mental Health		Configuration Manager		
Chief Asset Management Officer		Construction Best Practice Manager		
Chief Commercial Services Officer		Contaminated Land Officer		
intentionally blank		Continuing Care Development Manager		
Chief Economic Development Officer		Contract Manager (Development)		
Chief Engineer		Contract Manager (Fac Man & Refurb)		
Chief Environmental Health Officer		Contracts Engineer		
Chief Environmental Services Officer		Contracts Manager	X3	
intentionally blank		Co-ordinator		
Chief Officer (Audit and Risk)		Co-ordinator - Independent Reviewing		
Chief Officer (Business Transformation)		Co-ordinator (Therapeutic Services)		
Chief Officer (Corporate Property Mgt)		Co-ordinator NGT		
intentionally blank		Co-ordinator QP (Therapeutic Services)		
Chief Officer (Financial Development)		Corporate Consultation Manager		
Chief Officer (Financial Management)		Corporate Contracts Mgr		
intentionally blank		Corporate Customer Relations Manager		

Chief Officer (Policy, Partnerships & LI)		Corporate Debt Manager	
Chief Officer for Major Projects		Crime Reduction Manager	
Chief Officer for Resources & Strategy		Curriculum Development Manager	
Chief Officer (Human Resources)		Customer Development Manager	
Chief Officer Public Private Partnership		Customer Services & Development Manager	
Chief Officer Resources & Strategy	x3	Customer Services Manager	X4
Chief Officer Safer Leeds Drugs		Database Manager	
Chief Procurement Officer		Delivery Manager - Alcohol&Violent Crime	
Chief Superintendent		Democratic Services Officer	
Chief Superintendent Registrar		Deputy Area Manager East North East	
Chief Swimming Coach		Deputy Area Manager West North West	
Child Protection Co-ordinator	x5	Deputy Chief Customer Services Officer	
Childcare Support Team Manager	x2	Deputy Chief Executive	
Children's Centre Development Manager		Deputy Chief Planning Officer	
Children's Centre Improvement Manager	x2	Deputy Chief Procurement Officer	
Children's Centre Manager	x2	Deputy City Centre Manager	
Children's Commissioning Manager		Deputy Director Leeds Initiative	
City Centre Manager		Deputy Director Partnerships & Org Effect	
City Development Manager		Deputy Director Strategic Commissioning	
Civic & Community Buildings Manager		Deputy Electoral Services Manager	
Civic Architect		Deputy Head of Face to Face Contact	
Client Services Manager		Deputy Manager	x6
Commercial Assets Manager		Deputy Manager - Operational Performance	
Commercial Development Manager		Deputy Markets Manager (Operations)	
Commissioning & Contracts Manager		Deputy Section Head	
Commissioning & Dev Manager - Treatment		Deputy Sport Operations Manager	
Commissioning & Dev Manager Young People		Design Team Manager	
Commissioning & Development Manager		Desktop Team Leader	
Commissioning & Development Manager DIP		Development & Delivery Manager	
Commissioning Manager		Development & Support Manager	
Communication & Engagement Manager		Development Officer	x5
Communications & Cust Relations Manager		Development Project Co-ordination Mangr	
Communications Manager	X2	Directorate Property Manager	
Communications Manager (St Comms & Mktg)		Directorate Support Manager	
Community Issues Co-ordinator		Disability Team Manager	x6
<b>Category B Positions</b>	<b>If more than one number of posts</b>	<b>Category B Positions</b>	<b>If more than one number of posts</b>
Diversity Advisor		Head of Affordable Housing Delivery	
Drug Related Deaths Investigator		Head of ALMO Governance	
DSC Project Manager		Head of Architectural Design Services	
Early Foundation Stage Advisory Teacher		Head of Area Co-ordination	
Early Foundation Stage Manager		Head of Arts and Events	
Early Years Consultant		Head of Audit	
Economic Policy & Information Manager		Head of Benefits	
Education Co-ordinator		Head of Build. Stand. and Compliance Svs	
Education Resource Coordinator		Head of Building Maintenance	
Education Support Team Leader		Head of Business Support and Tourism	
Electoral Services Manager		Head of Catering and Cleaning	
Environment City Team Manager		Head of Central Payments	
Environmental Assessment Manager AQ		Head of Centre	
Environmental Quality Technical Advisor		Head of Children's Centre Services	x6
Environmental Studies Manager		Head of City Project Office	
ESCR Project Leader	x3	Head of Civic and Ceremonial Support	
Evening Teacher 26th	x2	Head of Collections	
Events Manager		Head of Commissioning Adults	
Events Manager		Head of Commissioning Children	
Exchequer Services Manager		Head of Communications	x2
Exchequer Services Manager		Head of Community Services and Litigat.	
Executive Accountant	X3	Head of Contact Centre	
Executive Manager	X2	Head of Corporate Efficiency Review Team	
Executive Manager - Finance		Head of Customer Services & Support	
Executive Manager - Legal		Head of Development	X2
Executive Manager (Specialist Projects)		Head of Development and Regulatory	
Executive Officer	X2	Head of East Project	
Executive Project Manager	X5	Head of Engineering Services	
Executive Solicitor		Head of Environmental Services	
Executive Technical Manager		Head of E-Planning Team	
Facilities Services Manager		Head of Equalities	
Family Placement Co-ordinator		Head of Face to Face Contact	
Finance and Resource Manager		Head of Facilities Management	
Finance Manager	X20	Head of Finance	X6
Find Your Talent Project Manager		Head of Fleet Services	
Food & Health Manager		Head of Governance Services	
Foundation Stage Advisory Teacher		Head of Graphics and Communications	
Foundation Stage Manager		Head of Heritage Services	
Fuel Savers Manager		Head of Highway Development Services	
General Manager Fleet Maintenance		Head of Highways Services	
General Manager Fleet Services		Head of Housing Strategy & Solutions	
General Manager Passenger Services		Head of Human Resources	X8

Group Architect		Head of ICT	
Group Engineer	X17	Head of Inclusion	
Group Engineer - Temporary		Head of Jobs and Skills	
Group Engineer (Development Control)		Head of Learning & Audience Development	
Group Engineer Building Control		Head of Leeds Community Safety	
Group Engineer Mechanical		Head of Licensing & Registration	
Group Landscape Architect		Head of Markets	
Group Manager	x2	Head of Payroll Services	
Grp Leader - Minerals&Contaminated Land		Head of Pension Services	
Head ICT Business Engagement		Head of Performance - Adult Social Care	
Head ICT Programme & Resource Management		Head of Performance & Svce Improvement	
Head ICT Service Delivery		Head of Planning and Economic Policy	
Head ICT Strategy Architect & Commissng		Head of Planning Services	
		Head of Policy and Performance	
<b>Category B Positions</b>	<b>If more than one number of posts</b>	<b>Category B Positions</b>	<b>If more than one number of posts</b>
Head of Policy Performance & Improvement	X2	Insurance Manager	
Head of Policy, Planning & Improvement		Integration Consultant	
Head of Property		Integration Programme Manager	
Head of Property Maintenance		ISSP Manager-FTC	
Head of Property Management		IYSS Manager	
Head of Property; Finance and Technology		JCS PLD Manager	
Head of Regeneration Policy & Planning		LD Group Support Manager	
Head of Renaissance Unit		Lead Reporting Officer	
Head of Residential,Fostering & Adoption		Leeds Bradford Corridor Project Manager	
Head of Renaissance Unit		Leisure Tourism Manager	
Head of Residential,Fostering & Adoption		LIAP Manager	
Head of Revenues		Libraries Service Delivery Manager	
Head of Safeguarding		Locality Enabler	X4
Head of Scrutiny Support & Member Dev		Location Based Support Manager	
Head of Service Commercial & Business		Manager	X2
Head of Service Delivery	x3	Manager - (RAP)	
Head of Service Delivery Enablement		Manager - (RAP)	
Head of Service Learning Disability		Manager (Ftc)	
Head of Service Parking / Env Action		Manager East North East Env Action	
Head of Service Pollution Control / Hsg		Manager Highways & Env Enforcement	
Head of Service Transformation		Manager Technical	
Head of Service Youth Offending		Manager West North West Env Action	
Head of Service-Business Support Centre		Marketing & Communications Manager	
Head of Site Development	x2	Marketing Manager	
Head of Sport and Active Recreation		Mental Capacity Act Programme Manager	
Head of Strategic Commissioning		Modernisation Manager (Older & Disabled)	
Head of Strategy		Monitoring Officer	x2
Head of Support Services		Multi-Agency Panel Manager	
Head of Sustainable Development		Neighbour'hd's and Hous. Strategy Manager	
Head of Transport Policy		Neighbourhood Information Officer	
Head of Urban Traffic Control		Neighbourhood Manager	
Head of Waste Management		Neighbourhood Services Manager	x2
Head of Youth Service		Neighbourhood Services Manager	x2
Health & Safety / Pest Control Manager		Network Development Lead	
Highway Design & Construction Manager		NMC Manager	
Highways Planning Engineer		Occupational Health Manager	
Homeless & Prevention Manager		Occupational Health Nurse Adviser	
Housing Asset & Development Manager	x2	Older People Commissioning Officer	
Housing Lawyer		Operational Manager	x4
Housing Policy & Monitoring Manager		Operational Manager-Court Service	x2
Housing Regeneration Project Manager		Operations & Business Manager	
Housing Regulation Manager	x2	Operations Manager	x4
Housing Strategy & Commissioning Manager		Operations Manager Highways N	
HR Manager	X27	Out of School Activities Manager	
HR Manager H&S		Outdoor Recreation Officer	
ICT Resources Manager		Parenting Unit Manager	
ICT Technical Design Architect	X3	Parking Manager	
Improvement Manager		Parks & Countryside Manager City Wide	
Independent Reviewing Officer		Parks Area Manager	x3
Independent Reviewing Officer - QP	X4	Partnership Account Manager P & P	
Independent Safeguarding & Risk Manager	X3	Partnership Advisory Teacher	
Information & Reporting Manager		PATH Manager	
Information and I.T. Manager		Performance & Governance Manager	
<b>Category B Positions</b>	<b>If more than one number of posts</b>	<b>Category B Positions</b>	<b>If more than one number of posts</b>
Performance & Business Dev Manager		Principal Officer Older People's Commsng	
Performance & Commissioning Manager		Principal Officer Sport Development	
Performance & Improvement Manager		Principal Parks Area Manager	x3
Performance & Quality Manager		Principal Planner	x24
Performance and Improvement Manager		Principal Project Assurance Officer	
Performance Manager	x3	Principal Quantity Surveyor	
Performance Support Services Manager	x2	Principal Risk Management Officer	
PFI Project Adviser		Principal Scrutiny Adviser	x5

PFI Street Lighting Contract Manager		Principal Surveyor	x2
Physical Activity Manager		Principal System Support Officer	
Planned Maintenance Manager		Principal Traffic Engineer (E & NE)	x3
Planning Agreement Manager		Principal Unit Manager	x11
Policy and Finance Manager		Principal Youth Officer	
Policy Manager		Priority Outcome Commissioner	
Policy Monitoring Manager		Problem Management Team Leader	
Policy Officer - Council and ALMO Group		Processing Manager	
Policy,Media&Communications Support Mgr		Procurement & Quality Manager	
Political & Public Executive Spt Manager		Procurement Compliance & Regulation Mgr	
Pollution Control Manager		Procurement Initiatives & Projects Mgr	
Practice Manager FTC		Procurement Performance & Systems Mgr	
Press and Media Manager		Procurement Training & Development Ofr	
Prevent Co-ordinator		Product Development Manager	
Principal Architect		Product Services Manager	
Principal Audit Manager	x4	Programme Manager	x6
Principal Compliance Officer		Programme Manager - Gershon	
Principal Corporate Governance Officer	x2	Programme Manager (LEGI) - Temporary	
Principal Emergency Planning Officer		Programme Manager (Olympics 2012)	
Principal Engineer	x12	Programme Manager Culture	
Principal Engineer - Network		Programme Manager Harmonious Communities	
Principal Financial Manager	x16	Programme Manager-Service Transformation	x2
Principal Fleet Deployment Manager		Project Co-ordinator	x2
Principal Governance Officer		Project Co-Ordinator PO5	x3
Principal Graphic Design Officer		Project Leader	x3
Principal Group Leader (Architecture)		Project Manager	
Principal Highways Development Engineer	x3	Project Manager - TBP Activity	
Principal IT Officer	x29	Project Manager - TBP Learning	
Principal IT Officer (Consultant)		Project Manager (Business Intelligence)	
Principal IT Officer (Consultant)		Project Manager (Doc & Record Mgt)	
Principal IT Officer (GIS)		Project Manager (PFI Programmes)	
Principal IT Officer-Data Communications		Project Manager (Technical)	
Principal Legal Officer	x24	Project Manager (Transport Initiatives)	
Principal Legal Officer (Childcare)		Project Manager (Transport Projects)	
Principal Legal Officer (Disrepair)		Project Manager Linkage	
Principal Minerals Planner		Project Manager PFI	
Principal Officer Adult Commissioning		Project Manager PO5	
Principal Officer Business & Contracts		Project Manager RWT	
Principal Officer Carers Commissioning		Project Manager Yorkshire Cities	
<b>Category B Positions</b>	<b>If more than one number of posts</b>	<b>Category B Positions</b>	<b>If more than one number of posts</b>
Project Manager/Principal Co-ordinator		Senior Improvement Manager	
Project Officer	x4	Senior Improvement Officer	
Project Solicitor	x3	Senior Keyworker ASW	x5
Project Team Leader	x3	Senior Monitoring Officer	x2
Projects Manager		Senior Parks Area Manager	x2
Property Services Manager		Senior Performance & Improvement Manager	
Public Safety Manager	x2	Senior Performance & QA Officer	
Quality and Standards Manager		Senior Performance Assurance Analyst	
Recreation Projects Manager		Senior Performance Manager	
Refugee & Asylum Services Manager		Senior Policy & Information Officer	
Regional Policy Manager		Senior Policy Manager	
Resource Manager (Community Support )		Senior Practitioner Safeguarding & Risk	x6
Resources Manager		Senior Procurement Projects Officer	x2
Responsive Maintenance Manager		Senior Project Manager	x8
Road Casualty Reduction Manager		Senior Project Officer	x5
Safeguarding Board Manager		Senior Quality Assurance Officer SG & R	
Safeguarding Strategy & Risk Manager		Senior Rd Accident Investigation Officer	
Sargent Team Manager		Senior Road Accident Analysis Officer	
Section Head	x4	Senior Service Manager	
Section Head - Local Housing Allowance		Senior Surveyor	x3
Section Head (EEGL)		Senior System Development Manager	
Section Head (Property and Finance)		Senior Technical Manager	
Section Head (Social Services Legal)		Senior Youth Officer	x3
Section Head Civil Litigation		Server Development Lead	
Section Head Performance, Planning & Inf		Service Delivery Manager	x22
Senior Audit Manager	x4	Service Development Manager	x7
Senior Business Change & Support Manager		Service Manager	x4
Senior Business Process Analyst	x3	Service Manager - LCES & Telecare	
Senior Child Protection Co-ordinator		Service Manager IT and Administration	
Senior Engineer	x5	Service Manager Operational	
Senior Executive Manager - Commercial		Service Manager Technical	
Senior Executive Manager - Proj & Tech		Service Planning Co-ordinator	
Senior Finance Manager	x23	Service Projects Manager	
Senior Highways Development Engineer	x2	Service Support Manager	x2
Senior HR Officer-Independent Living Prj		Services Manager (Children)	
Senior ICT Consultant	x3	Sites & Planning Manager	
Senior ICT Project Manager	x4	Sport Operations Manager	
<b>Category B Positions</b>	<b>If more than one</b>	<b>Category B Positions</b>	<b>If more than one</b>

	number of posts		number of posts
Strategic Communication Manager		Technical Manager Facilities Management	
Strategic Equalities Manager		Technical Services Manager	x2
Strategic Leader - Intelligence & Innvtn		Traffic Engineering Manager	
Strategic Leader - Partnerships & Ptcptn		Transition Team Manager	
Strategic Procurement Manager	x3	Transport Strategy Manager	
Strategic Sourcing Manager		UNIX Infrastructure Manager	
Strategy & Development Manager		Venues / Audience Development Manager	
Strategy & Policy Coordinator		Visitor Attractions Manager	
Strategy & Policy Officer		Waste Programme Manager	
Street User & Alcohol Officer		Welfare Rights Manager	
Streetscene Services Manager	x2	Wintel Manager	
Student Support Manager		Works Manager Pottery Fields	
Supply Chain Manager		Works Manager Seacroft	
Supporting People Manager		YHPSG Contract Manager	
Sure Start Partnership Manager		Yorks and Humberside RMP Manager	
Surveying Manager		Young People's Support Officer	
Taxation Manager		Youth & Voluntary Sector Engagement Mngr	
Teacher	x5	Youth Strategy Implementation Manager	
Team Co-ordinator			
Team Leader - SIU and Building Services	x19		
Team Manager	x14		
Team Manager - Adult Reviewing Team	x22		
Team Manager - Education			
Team Manager - Mental Health	x5		
Team Manager (Adults)	x22		
Team Manager (Children)	x35		
Technical Design Architect			
Technical Manager	x2		
Technical Manager Design & Build Post CI	x3		
<b>Category C Positions</b>	<b>If more than one number of posts</b>		

In dialogue with Directors in relation to posts that may fall within this category.

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**The Standards Committee – Politically Restricted Posts Sub-Committee**

The Standards Committee – Politically Restricted Posts Sub-Committee is authorised to discharge the following functions:

1. To consider any application for exemption from political restriction which is made to the Committee;<sup>1</sup> and
2. On the application of any person or otherwise, to give directions to the relevant authority requiring it to include a post in the list of politically restricted posts.<sup>2</sup>

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<sup>1</sup> Section 3A(1)(a) of the Local Government and Housing Act 1989 (as amended by Section 202 of the Local Government and Public Involvement in Health Act 2007)

<sup>2</sup> Section 3A(1)(b) of the Local Government and Housing Act 1989 (as amended by Section 202 of the Local Government and Public Involvement in Health Act 2007)

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**Report of the Chief Officer (Human Resources)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Officer Code of Conduct**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**Executive Summary**

1. The current Officer Code of Conduct was last reviewed in 1998.
2. The latest information from DCLG is that a further consultation on the Officer Code of Conduct will take place in 2010. In view of this it is proposed at this stage to make a number of minor changes to the current Code to reflect Organisational Changes within the Council, and to reflect the significant technological advances that have taken place in the last years.

## **1.0 Purpose Of This Report**

- 1.1 This report informs the Standards Committee of the current position on the proposed National Officer Code of Conduct.
- 1.2 The report also informs the Standards Committee of the changes that are proposed to the Leeds City Council Officer Code of Conduct.

## **2.0 Background Information**

- 2.1 The current Officer Code of Conduct (Appendix 1) was last reviewed in 1998.
- 2.2 The core of the current Officer Code of Conduct is believed to date back to the 1970s, when the government of the day commissioned both the 1974 Prime Minister's Committee on Local Government Rules of Conduct (the Redcliffe-Maud Committee) and the 1976 Royal Commission on Standards of Conduct in Public Life (the Salmon Commission). The Redcliff-Maud Committee made recommendations for a national Officer Code of Conduct at that time, and these formed the basis of our current Code. The current Code also reflects the model code of conduct for local government employees proposed by the Local Government Management Board in 1994.
- 2.3 It should be noted at this point that the Code of Conduct is part of the contractual arrangements for all Leeds City Council employees and that any proposed changes would need to be negotiated with the Trade Unions.
- 2.4 Other Core Cities are also using Officer Codes of Conduct which have not been reviewed recently. Although Manchester issued its current Code of Conduct in 2008, the other Core Cities are using Codes of similar age to our own:
- Newcastle's Code was written in 1997, and remains the same, albeit with an additional appendix, and some additional wording in 2001 about hospitality;
  - Bristol City's Code was written in 2001, and although it was reviewed in 2006 this didn't lead to any changes;
  - Sheffield's Code was also adopted in 2001; and
  - Birmingham's Code was revised on 2004, 2007 and 2008 but only to reiterate that the provisions would remain unchanged until the government consultation on the national Code of Conduct for Officers was complete.
- 2.5 An examination of other Core Cities' Officer Codes of Conduct reveals a broad agreement about the matters contained therein. There are no areas of our Current Code of Conduct which are not covered in all (or most) of the other cities' Codes. Similarly, some items in other Council's Codes of Conduct do not appear in Leeds'. Where there are discrepancies, the same subject matter is still addressed by the Councils, just not in their Code of Conduct.

## **3.0 Main Issues**

### Department of Communities and Local Government's position

- 3.1 The DCLG's last consultation document on Member and Officer Codes of Conduct was considered by the Standards Committee on 16 December 2008.
- 3.2 The DCLG had advised that the National Officer Code of Conduct would form part of the Community Empowerment, Housing and Economic Regeneration Bill, which was

on the draft legislative programme for 2008/09. This Bill has not, however, had its first reading yet.

- 3.3 The office of Paul Rowsell, Deputy Director, Local Democracy & Local Governance Division at the DCLG, advise that they intend to publish the Government's response to the consultation this later this month which will set out how the Government intends to proceed with the proposals in the consultation document.
- 3.4 It seems unlikely, therefore, that this matter will be included in the legislative programme during the lifetime of this parliament.
- 3.5 The consultation document, broadly, proposed that there be some general universal principles that apply to all officers, and that officers who exercise delegated powers should be subject to a similar (though not identical) set of standards as Members.

#### Organisational Changes

- 3.6 The current code of conduct in local terms and conditions is expressed as only applying to "employees of Leeds City Council whose employment falls within the purview of the LCC Personnel Panel." This wording does not appear in the version of the Code contained within the Constitution itself.
- 3.7 There are a number of other housekeeping issues, such as reference to the disciplinary procedure by its previous appendix number, references to teams within Finance that no longer exist, references to departments (rather than directorates), references to Personnel Sections, and so forth. It is proposed that these are reviewed and brought into line with current equivalents.

#### Technological Changes

- 3.8 At present any use of social networking sites (such as Facebook) by employees outside work which is highly derogatory to the Council, is covered in paragraph 1.5 of the existing code. It is acknowledged, however, that much more could be done to make clear the extent of the prohibitions in that paragraph and to explicitly state that those provisions include the use of social networking sites, email etc.
- 3.9 Other provisions may benefit from specifically mentioning that activities carried out through various electronic media would also be covered, for example friendships with contractors formed over social networking sites.

#### Information Knowledge Management

- 3.10 There are a number of aspects of the Council's Information Security – Policy and Procedure Development programme which have implications for rules currently reflected in the Code of Conduct.
- 3.11 In particular there could be arguments to:
- extend paragraph 13 (Use of Financial Resources) to include other resources, such as equipment and data, which is increasingly being recognised as a valuable commodity;
  - review paragraph 4 (Disclosure of Information) to ensure compliance with IKM best practice. It is also noted that significant legislation covering Data Protection Act and Freedom of Information Act may not be adequately reflected in these sections; and

- include specific reference to the use of Council stationery and elements of corporate identity such as the crest, sign-offs etc.

#### **4.0 Implications For Council Policy And Governance**

- 4.1 It is clearly the case that the Council's officer Code of Conduct is past the point where a review would be desirable. Conversely we are faced with the likelihood of a nationally imposed Code of Conduct.
- 4.2 If a National Code of Conduct is imposed, this will require an extensive review of the Code of Conduct current at that time to ensure compliance and compatibility.
- 4.3 Where specific service areas are experiencing isolated difficulties with the current Code of Conduct - for example some areas of Adults' Services have requested greater clarity over the issue of gifts from clients - it is entirely possible for managers to issue local work instructions providing these are clear, communicated to the employee, and are reasonable in all the circumstances. Postponing reviewing the Code does not compromise the Council's ability to address such concerns.

#### **5.0 Legal And Resource Implications**

- 5.1 A fundamental review of the current Code of Conduct would require significant officer time, including extensive consultation with Legal Services and with the trade unions.

#### **6.0 Conclusions**

- 6.1 The Code of Conduct does require a full review.
- 6.2 The lack of resolution on the proposed National Code of Conduct has led Leeds, like other major cities, to postpone any significant work on reviewing the current Officer Code of Conduct.
- 6.3 There is no suggestion that Leeds' current Officer Code of Conduct is not comparable with the Codes currently in use in other Core Cities.
- 6.4 The Information Knowledge Management review is still ongoing, and, in time will provide clear outcomes which should inform any review of those sections relating to data security, the corporate identity, and misuse of facilities.
- 6.5 In the interim, a relatively "light touch" series of amendments could assist in employees having greater clarity as to their responsibilities under the Code.
- 6.6 In summary, therefore, it is proposed that rather than engage in a fundamental review, that:
- The Code of Conduct be reviewed and updated for current terminology;
  - That amendments are made to make the scope of existing duties more explicit, e.g. to make it clear that the duty of loyalty applies to personal use of social networking sites; and
  - To include references to other significant legislative duties, e.g. the Freedom of Information Act.
- 6.7 Any changes proposed as a result would require consultation with representative trade unions.

## **7.0 Recommendations**

7.1 That the Standards Committee considers the content of this report.

### Background Documents

Officer Code of Conduct from Manchester City Council, Newcastle City Council, Bristol City Council, Sheffield City Council and Birmingham City Council

DCLG Consultation Document (October 2008): Communities in Control: Real people, real power – Codes of Conduct for local authority members and employees

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**OFFICER CODE OF CONDUCT****1.0 INTRODUCTION**

- 1.1 This Code of Conduct is aimed at ensuring that employees are aware of the standards of behaviour expected of them by Leeds City Council (LCC).
- 1.2 The public is entitled to expect the highest standards of conduct from all employees who work for Leeds City Council.
- 1.3 Individuals are responsible for ensuring that they are aware of the Code and that they comply with its requirements. Line managers are responsible for ensuring that subordinates have been made aware of the provisions of this Code of Conduct.
- 1.4 Failure to observe the standards set out in this Code may be regarded as serious and any breach will render an employee liable to disciplinary action, which may include dismissal. The disciplinary procedure is shown at Appendix 13 to the Local Conditions of Employment. The list of actions which will be regarded as misconduct, which is contained within the disciplinary procedure, is not exhaustive.
- 1.5 All employees have a Common Law duty of loyalty to their employers and any failure to fulfil this duty will be treated as a breach of this Code of Conduct. This means that whilst the Code will not specifically cover every eventuality, employees should be aware that conduct which most people would consider as unreasonable or disloyal will be treated as a breach of the Code. Such actions that would normally be obviously disloyal to most people will be considered as breaches of the Code; e.g. an employee who is shown to have publicly made derogatory or slanderous remarks about other employees or Members, would be in breach of the Code even though such activities are not specifically listed.
- 1.5.1 Employees may very well have legitimate roles to carry out: as Trade Union representatives; community action group representatives; tenant committee members etc. These roles may involve such staff in taking part in public meetings, making statements to the press etc. acting on behalf of their particular group. Employees should make clear the capacity in which they are speaking or making statements etc. In this capacity, the employee should exercise great care in presenting the facts of the case in order to avoid personal opinions which may be damaging to the Council or derogatory or slanderous remarks about other employees or Members. Paragraph 15 of this Code specifically refers to contact with the press and media.

**1.6 Impropriety/Breach of Conduct**

It is the duty of each employee to report to the Internal Audit Division - see Financial Regulation FR 6.3 - In accordance with Financial Regulation 6.3, whenever a matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected

irregularity, including unofficial funds, the respective departmental director shall immediately notify the Head of Audit.

## **2.0 STATUTORY PROVISIONS**

- 2.1 Under Section 117 of the Local Government Act 1972 an employee must give notice to the Council of any pecuniary interest he/she has in any contract whether it has been or is proposed to be entered into by the Council. Such a declaration should be made to his/her Departmental Chief Officer who must also inform The Chief Officer. Such a declaration must be made as soon as an employee becomes aware of the possibility of any such conflict arising or indeed that may be perceived/ construed as arising -see paragraph 9.1.
- 2.2 Section 117 requires that “an officer shall not, under colour of his office or employment accept any fee or reward whatsoever other than his/her proper remuneration”.
- 2.3 An officer who contravenes the provisions of Section 117 shall be liable on summary conviction to a fine not exceeding £1,000.
- 2.4 Section 2 of the Prevention of Corruption Act 1916 provides that where it is proved that anyone holding or seeking a contract with a public body has made a payment to an employee of that body, the payment shall be deemed to be corrupt unless the contrary is proved.

## **3.0 GENERAL CONDUCT/BEHAVIOUR**

- 3.1 Because public confidence, and that of the Council, would be shaken if the least suspicion, however ill-founded, that an employee could in any way be influenced by improper motives were to arise, it is not enough to avoid actual impropriety and officers should at all times also avoid any occasion for suspicion of the appearance of improper conduct. Accordingly, employees must not accept gifts, entertainment, hospitality or any benefits of any kind from firms or people connected with those firms with whom the Council may, whether directly or indirectly, be in actual or potential contractual or business relationships. This applies to those benefits which are for the employee(s) themselves and those connected with the employee(s) and whether received in connection with official duties or not. All offers of such benefits must be refused. This includes accommodation, travel, food, drink, entertainment, hospitality, presents and all similar benefits. It also includes the acceptance of goods or services from a firm on preferential terms for private purposes if these terms were given either directly or indirectly because of the contractual or other official relationship either potential or actual between the firm and the Council. The only possible exceptions are set out below, but it is emphasised that they should be accepted only where to refuse them would inhibit the normal business activities of the Council. Each officer is personally responsible for any decision to accept such offers and for any possible criticism that may follow. If in doubt he/she should refuse, or insist on paying for himself/herself, or refer to the Departmental Chief Officer.

### 3.1.2 **Gifts May Only be Accepted in the Following Circumstances**

Those gifts which are of a modest kind, such as a calendar, diary, blotter or other inexpensive item of office equipment, and which can be regarded as in the nature of advertising matter, can be accepted. Such gifts must bear the name or insignia of the firm concerned. All other gifts must be politely but firmly refused. If received through the post they must be returned immediately to the donor with a suitably worded covering letter.

### 3.1.3 **Meals or Refreshments May Only be Accepted in the Following Circumstances**

- (i) Only such meals or refreshments as are a necessary part of the business in hand and which are immediately and directly connected with and wholly incidental to Council business can be accepted. Even then, they must be of a modest kind and wherever possible the officer should pay for himself/herself.
- (ii) Such meals or refreshments as are connected with a public or semi-public occasion, such as an opening ceremony associated with new premises in which the Council have an interest such as owners or partners in the scheme and where the officer attends in an official capacity as representative of the Council and obtains prior authorisation from the appropriate officer\*.

### 3.1.4 **Offers of Accommodation or Travel Which May be Accepted**

Only where practically unavoidable, of a modest kind and necessarily and wholly incidental to the business in hand, such as a lift for a short distance to a site where the officer concerned has no other means of transport.

3.1.5 Visits to inspect land, buildings, machinery, goods or services where the Council bear the expense and the appropriate officer\* has given prior approval.

### 3.1.6 **Conferences and Seminars etc.**

If the Council pays the fee for a conference, seminar or the like, then there is no requirement to make an entry in the REGISTER OF GIFTS AND INTERESTS (see appendices). If no fee is paid, offers of seminars and the like that include some form of refreshment and that are rejected, need not be recorded in the REGISTER. All offers for which no fee is paid and for which an offer is accepted, must be recorded in the register. All offers for which no fee is paid and where the seminar includes another event, function or overnight stay, must be recorded. All offers of a significant nature must be recorded - a degree of judgement is required in determining significance. **In deciding the significance of an offer, the potential recipient should take**

into consideration various factors including; the financial value of the offer; the imminence of any relevant contractual matters/arrangements; any legal action/public enquiries; any Council decisions (pending or otherwise). This list is not exhaustive

**\*NOTE:- This person will normally be the Departmental Chief Officer(DCO)/ Director in the case of an employee other than a DCO or Director. DCOs and Directors are expected to exercise their own judgement in such matters but may be answerable to Members or The Chief Officer in this regard.**

### 3.2 Disclosure of Gifts and Hospitality

All offers of gifts and or hospitality, with the exception of the minor items outlined in 3.1.2 above, must be recorded in the register of gifts and hospitality using a copy of the form shown at Appendix 1

## 4.0 DISCLOSURE OF INFORMATION

- 4.1 This Council believes that open government is best. The law requires that certain types of information must be available to Members, auditors, government departments, service users and the public. The Council itself may decide to be open about other types of information. Employees must be aware of which information they are authorised to release and to whom. If an employee has any doubts as to whether or not an item of information should be released then they should politely refuse to offer the information and refer the matter to their line manager or other person who has a line management responsibility for them. Employees should also be aware of the provisions of the Data Protection Act 1984 and the Access to Personal Files Act 1987.
- 4.2 Any particular information received by an employee from a Councillor which is personal to that councillor and is not held by the Council on documents available for public scrutiny, should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law.
- 4.3 **'Insider Dealing' -Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way,** e.g. where an employee of the Council who in the course of their employment becomes aware of information (which is not in the public arena i.e. is confidential), which could impact upon the performance of a business or other corporate identity, such information must not be passed on to any third party who does not have a legitimate right of access to that information. Where an employee is in doubt as to the issue of a right of access to such information then they should refer the matter to a senior officer of their department or to the Internal Audit Division on ext. 4645 or write to Department of

Finance (Exchequer Audit), Leeds City Council, Civic Hall Annexe, Leeds, LS1 1JF. All information will be treated in confidence by the officer(s) concerned. The

information must not be disclosed unless the Internal Audit Division have agreed that it is 'safe to do so'. - For further information see Appendix 3

## **5.0 POLITICAL NEUTRALITY**

- 5.1 Employees serve the Council as a whole. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 5.2 Employees should not usually be called upon to advise any political group of the Council either in regard to the work of the group or of the Council. Neither should employees be required to attend political group meetings except that in exceptional circumstances the Chief Officer or Departmental Director may give advice. All other employees must receive clearance from the Director of their department.
- 5.3 Where employees are required to advise political groups, they must do so in ways which do not compromise their political neutrality.
- 5.4 Employees, whether or not politically restricted, must follow every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.
- 5.5 Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraphs 5.1 to 5.3. The Council's policy concerning Politically Restricted posts as defined by the Act is set out as Appendix 43 to the Local Conditions of Service.

## **6.0 RELATIONSHIPS**

### **6.1 Councillors**

Employees are responsible to the Council through its senior managers. For some, their role is to give advice to councillors and senior managers and all are there to carry out the Council's work. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

### **6.2 The Local Community and Service Users**

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community and as defined by the policies of the Authority.

### **6.3 Contractors**

Employees should make known to their Departmental Chief Officer, all relationships of a business or private nature with external contractors or potential contractors. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. This information should be

given to the Chief Officer or nominated representative, using a copy of the form 'REGISTER OF EMPLOYEES' INTERESTS' as shown at Appendix 2.

6.4 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to their departmental director. This information should be given to the Chief Officer or nominated representative, using a copy of the form 'REGISTER OF EMPLOYEES' INTERESTS' as shown at Appendix 2.

6.5 In all cases, employees should declare any interests/relationships as soon as is practicable.

### **7.0 APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

7.1 Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have any personal relationship outside work with him or her.

7.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

### **8.0 OUTSIDE COMMITMENTS**

8.1 All employees have contractual obligations with the Council and should not take outside employment which conflicts with the Council's interest.

8.2 All employees graded above spinal column point 28 of the NJC scheme of conditions of service for Local Government Employees are required to obtain consent of the Council, by applying to their Departmental Chief Officer, to take outside employment.

8.3 No outside work of any sort, whether paid or unpaid, should be undertaken in the office and the use of facilities (typist, telephone, computers, photocopier, etc.) is forbidden for such purposes.

8.4 Employees should be aware that all literary, dramatic, musical or artistic work (including (as an example) but not limited to documents, computer programs, photographs, drawings, recordings or graphic work) which is produced by the employee in the course of their employment with the Council is the copyright of the Council in accordance with S11(2) of the Copyright Design and Patents Act 1988. Accordingly, employees must not do anything which in any way would constitute an infringement of the Council's copyright in any literary, dramatic musical or artistic work. Employees must use all reasonable endeavours to ensure that they do not do anything which would constitute an infringement of the copyright of any third party whilst in the course of their employment with the Council.

## **9.0 PERSONAL INTERESTS**

9.1 Employees must declare to their Departmental Chief Officer any non-financial interests that they consider conflict with the Council's interests, for example, if they are involved in an official capacity with an outside organisation which has dealings with the Council, e.g. grant requests. Such a declaration must be made as soon as an employee becomes aware of the possibility of any such conflict arising or indeed that may be perceived / construed as arising. A good test is for the employee to ask himself/herself whether others would think that the interest is of a kind to make this possible. If the employee thinks this is so or is in doubt then the information should be given to the Chief Officer or nominated representative, using a copy of the form 'REGISTER OF EMPLOYEES' INTERESTS' as shown a Appendix 2

9.2 Employees must declare to The Chief Officer any financial interests which could conflict with the Council's interests, e.g. work for which a fee is received. This information should be given to The Chief Officer or nominated representative, using a copy of the form 'REGISTER OF EMPLOYEES' INTERESTS' as shown at Appendix 2

9.3 Employees should declare to the Council, via the Chief Officer, membership of any secret societies. The definition of "secret society" is as follows:

"Any lodge, chapter, society, trust or regular gathering or meeting which:

- is not open to members of the public who are not members
- includes in the granting of membership a requirement of the member to make a commitment (whether by oath or otherwise) of allegiance
- includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy in regard to rules, membership or conduct."

## **9.4 Declaration of Interest - Freemasonry**

The Council has resolved that this Council believes that in the interest of free and open government that any member of the Freemasons be obliged to declare their interest, and to this end:

## *Officer Code of Conduct*

- (i) instructs The Chief Officer to make arrangements so that all Council Members who are Freemasons declare the membership in a register of interest: and
- (ii) instructs The Chief Officer to establish an employees' register of interest in which all who are Freemasons declare their membership.

A register of interest is available in the room of the Members Services Officer for those employees involved. The responsibility for bringing this resolution to the notice of departmental employees rests with Departmental Chief Officers.

- 9.5 Where employees have declared an interest in regard to paragraphs 9.3 & 9.4, the information should be given to The Chief Officer or nominated representative, using a copy of the form 'REGISTER OF EMPLOYEES' INTERESTS' as shown at Appendix 2.

### **10.0 EQUALITY ISSUES**

- 10.1 The Council is an equal opportunities employer and all employees are under an obligation to ensure that policies relating to equality issues, are complied with and that they do not unlawfully discriminate on the grounds of race, sex or disability.
- 10.2 All members of the local community, customers and other employees have a right to be treated with fairness and equity.

### **11.0 SEPARATION OF ROLES DURING TENDERING**

- 11.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. All such employees must ensure that their actions are in accordance with the Standing Orders with respect to contracts. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 11.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 11.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 11.4 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.



## **12.0 CORRUPTION/FRAUD & THEFT**

- 12.1 It is a serious criminal offence for employees corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made, it is for the employee to demonstrate that any such rewards have not been corruptly obtained.
- 12.2 Where an employee has any suspicions that Council employees or any other individuals are involved in potentially fraudulent or corrupt activities, or theft, then they must in the first instance report these suspicions to either a senior employee (graded EO or above) within their department. If an employee feels unable to do this then they should contact Internal Audit, Corporate Services on ext 74371 or write to Internal Audit, Corporate Services, Leeds City Council, 2<sup>nd</sup> Floor West, Civic Hall, Leeds, LS1 1UR. All information will be treated in confidence by the officer(s) concerned.

## **13.0 USE OF FINANCIAL RESOURCES**

- 13.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

## **14.0 SPONSORSHIP - GIVING AND RECEIVING**

- 14.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 14.2 Where the Council wishes to sponsor an event or service, neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to the appropriate Departmental Chief Officer of any such interest. Similarly where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## **15.0 CONTACT WITH THE PRESS AND MEDIA**

- 15.1 Unless specifically nominated and authorised by The Departmental Chief Officer concerned, employees are not permitted to give reports or speak to the press and media on matters relating to employment with the Council, Council business or decisions of the Council. In the main, the Chief Officer, Executive Directors, Departmental Chief Officers and Senior Assistant Directors will be responsible for dealing with the press and media. Employees with a responsibility for dealing with the press and media should guard themselves against declaring a view 'whilst acting in their official capacity' which is contrary to a position taken by the Council or which may be deemed to be critical of that position.

## *Officer Code of Conduct*

- 15.2 In the event of an industrial dispute involving a Trade Union, an elected representative of that Trade Union may be called upon by the press or media to comment on the dispute. Where a decision is taken by that Trade Union organisation to respond, the employee should exercise great care in presenting the facts of the case in order to avoid personal opinions which may be unreasonably critical of the Council, other employees or Members. Employees in this position should make clear the capacity in which they are speaking. Employees concerned about their position should consult with full time Union Officials.
- 15.3 In all circumstances, employees are under a general duty of care to avoid a situation arising where they are shown to be acting in conflict with the best interests of the Council and should not criticise, damage or act in any way against the best interests of the Council (see proviso's at paragraph 1.5.1). Should this occur, and
- 15.4 the employee is found to have acted unreasonably then they may be subject to disciplinary penalties following agreed procedures. Paragraph 1.5.1 refers.

## **APPENDIX 1**

### **REGISTER OF HOSPITALITY AND GIFTS**

#### **GUIDANCE NOTES FOR EMPLOYEES COMPLETING THE REGISTER OF GIFTS AND HOSPITALITY**

##### **1.0 INTRODUCTION**

- 1.1 These guidelines are intended to help employees complete the Register of Gifts and Hospitality forms. Examples of the forms are attached; the Notification of an Offer form is referred to as Form A and the Register of Hospitality and Gifts form is referred to as Form B.
- 1.2 As a general principle, if employees are in any doubt, they should complete Form A. (Your Personnel Section will assist you if you have any questions).

##### **2.0 DEFINITION OF GIFTS AND HOSPITALITY**

- 2.1 Gifts and hospitality, including meals or refreshments, accommodation or travel and conferences or seminars are defined in the Code of Conduct. Indeed, the Code of Conduct outlines specific instances in which an offer need not be registered. Employees should refer to this document to resolve any dispute about whether an offer needs registering. However, employees should note that a good test is to ask whether others would think that the acceptance of the offer could compromise the employee's position. If the answer is yes, or even possibly, the offer should be politely but firmly rejected.
- 2.2 This note relates specifically to those offers requiring approval, as outlined in the Code of Conduct.

##### **3.0 COMPLETION OF FORM A**

- 3.1 Departmental Chief Officers must ensure that supplies of Form A are available at all appropriate establishments within their department. Having decided that a Form A must be completed the following procedures should be followed.
- 3.2 The name of the employee receiving the offer should be entered in the first box. If the offer was made to more than one employee, the names of all employees involved should be entered, unless this is impracticable due to the number of employees involved. If this is the case, the collective name of the employees should be recorded, for example, the name of the section.
- 3.3 The date the offer was made should be recorded in the Date Offer Made box.

## *Officer Code of Conduct*

- 3.4 Details of the offer should include as many details as possible. This includes precise details of the offer and, if relevant, details about the circumstances that lead to the offer being made and accepted or rejected. The way in which the offer was made should also be specified. For example, was the offer made in person, over the telephone, by letter or by any other means.
- 3.5 The box “offer made by” should be used to record the name of the individual or individuals making the offer, if known.
- 3.6 If the individual(s) making the offer represents an organisation, the name of the organisation should also be recorded in the relevant box.
- 3.7 The relevant box should be ticked, either to show that the offer was rejected or that the offer has been forwarded to the Departmental Chief Officer for approval. If the employee proposes to accept the offer, a justification must be included that must say why it was appropriate or necessary to accept the offer. This should take into account the factors outlined in the Code of Conduct. It is anticipated that acceptances will be rare. *It should be noted that there is no provision for offer to be accepted without the express approval of the Departmental Chief Officer.*
- 3.8 The name of the employee completing the form should then be entered in the “completed by” box. It is anticipated that in the majority of cases, the person receiving the offer will be the person completing the form. However, there may be instances where an offer is reported by a third party. This may be necessary on occasions where the person receiving the offer decides, for whatever reason, not to notify the Departmental Chief Officer of the offer.
- 3.9 The form should then be sent to the Departmental Chief Officer. If the offer has been rejected, the Departmental Chief Officer must arrange for the central register, Form B, to be completed and need take no further action with Form A. Form A should then be filed.
- 3.10 However, if the proposal is that the offer should be accepted and the Departmental Chief Officer agrees that it is appropriate to accept the offer, the form should be signed and a copy forwarded to the employee submitting the request. The original Form A should be retained by the Departmental Chief Officer for filing. In addition, the details should be included on Form B.
- 3.11 If, on the other hand, the Departmental Chief Officer does not agree with the justification provided, the Departmental Chief Officer must take appropriate action. Appropriate action will depend on the individual circumstances of each case, as each case must be judged on its own merits, and therefore cannot be specified in advance. However, as a minimum the Departmental Chief Officer must return a copy of the form to the employee(s) concerned indicating why acceptance has not been approved. Again, the original should be retained for filing.

- 3.12 If the offer is made to the Departmental Chief Officer, the same procedures apply. The only exception is that offers accepted by Departmental Chief Officers do not need to be approved by more senior officers in other departments or officers within the group of committees or by politicians. The Departmental Chief Officer must use their judgement to decide whether the offer should be accepted.

#### **4.0 COMPLETION OF FORM B**

- 4.1 Form B must be completed with the details contained on all Form A's submitted to the Departmental Chief Officer. The separate sections on Form B should be sequentially numbered. Good practice suggests that the Departmental Chief Officer should nominate an employee as responsible for completing Form B. Consideration should also be given to nominating a substitute who shall complete Form B's in the event of the absence of the nominated officer.
- 4.2 The register date is the date on which details are entered on Form B.
- 4.3 The details of the offers, including the names of the employee(s) that received the offer and the organisation making the offer, per Form A should be transferred to Form B. As comprehensive details of the offer as possible should be entered on the form.
- 4.4 If the offer has been rejected by the employee receiving the offer, Form B should be endorsed with an "R", for rejected. If the Form A is requesting approval by the Departmental Chief Officer, an "R" or an "A" should be entered, ("A" for accepted), depending on the decision of the Departmental Chief Officer. If the offer is approved for acceptance the Departmental Chief Officer should add comments in the comments box. The comments should provide justification for the acceptance. This could include the justification given on Form A, or a different justification, as appropriate.
- 4.5 Periodically, but at least every six months, the Departmental Chief Officer must review the Form B register. The review should seek to identify any unacceptable trends or situations that require further investigation. The Departmental Chief Officer must decide on appropriate action. Unacceptable trends could, for example, relate to individual firms making "excessive" offers. In conducting the review, Departmental Chief Officers should be mindful of:
- 4.5.1 Section 117 of the Local Government Act 1972 requires that an employee shall not, under colour of their office or employment, accept any fee or reward whatsoever, other than their proper remuneration.
- 4.5.2 Section 2 of the Prevention of Corruption Act 1916 provides that where it is proved that anyone holding or seeking a contract with a public body has made a payment to an employee of that body, the payment shall be deemed to be corrupt unless the contrary is proved. That is, the onus is to prove that the payment is not corrupt, not that it is corrupt.

**LEGAL SERVICES**  
**Register of Hospitality & Gifts**  
 Notification of an Offer

<b>Section A (for completion by employee)</b>		
Name:	Post Title:	Section:
Date Offer Made:		
Offer made by:		
Company/Body providing the gift/hospitality (if different from above)		
Details of offer		
(Tick appropriate box)		
<input type="checkbox"/> I have rejected the offer <input type="checkbox"/> Seek approval to accept the offer from the Assistant Chief Executive (Corporate Governance)		
If you seek approval to accept the offer, please give your justification for doing so:		
Signed:	Date:	

<b>Section B (for completion by the Assistant Chief Executive (Corporate Governance))</b>			
I hereby:	<input type="checkbox"/> Note the contents	<input type="checkbox"/> Approve the request	<input type="checkbox"/> Do not approve the request
Comments:			
Signed:	Date:		

<b>Section C (for completion by Personnel Section)</b>		
Details entered in the register	<input type="checkbox"/> Copy provided to employee	<input type="checkbox"/>
Registration No:	<input type="checkbox"/>	
Signed:	Date:	

**REGISTER OF HOSPITALITY/GIFTS ETC - EXEMPLIFICATION  
DEPARTMENT OF LEGAL SERVICES**

No	Register Date	Employee(s)	Offer/Circumstances/Date	Organisation	Accepted/ Rejected	Assistant Chief Executive (Corporate Governance) signature
						Comment (If accepted)
1						
2						
3						
4						
5						
6						
7						

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**REGISTER OF EMPLOYEES' INTERESTS**

As a general principle, employees should err on the side of caution and declare interests that they think could be covered by the following guidance, see notes for guidance overleaf. Assistance can be sought from your Personnel Officer in the first instance if any clarification is required.

NAME:	DEPARTMENT:	DATE:	PAY NO:
INTEREST	DETAILS		
1. Governor of educational establishment			
2. Involvement with organisation receiving grant aid from the City Council (including close relatives)			
3. Involvement in companies (state company and position) (including close relatives)			
4. Relationships to an officer graded Senior Officer or above or a Member			
5. Membership of secret societies as defined by LGMB			
6. Beneficial interest in land or property			
7. Intent to bid for land or property owned by the Council			
8. Others (please specify)			
Applicable to employees employed in a position responsible for letting or supervising contracts or selecting suppliers or contractors, including those relating to investments: Holding of shares or other securities, excluding banks and building societies (state name of company/body, declaration of size or nature or holding is not necessary)			

*See notes for guidance overleaf*

SIGNATURE:		DATE:	
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### **Register of Employees' Interests; Notes for Guidance**

As a general principle employees should err on the side of caution and declare interests that they think could be covered by the following guidance. Assistance can be sought from your Personnel Officer in the first instance if any clarification is required.

A close relative is defined as a spouse, parent, sibling, son, daughter or common law partner.

1. Membership of Governing Bodies, including all schools maintained by the authority, all further education establishments and all grant maintained schools.
2. Involvement could be either paid or unpaid.
3. Involvement in companies includes, for example, directorships and company secretary, or any other position where a person is actively involved in the running of a company's affairs, where the company has, or may have, a contractual relationship with the Authority.
4. Relationship to an officer graded senior officer or above or a Member. Relationship is interpreted to be a close relative, as defined above.
5. Secret societies are defined by the Local Government Management Board, it is recommended that this definition is used to determine whether a declaration should be made. The LGMB use the following definition:

'any lodge, chapter, society, trust or regular gathering or meeting, which:

- (a) is not open to members of the public who are not members of that lodge, chapter, society or trust
- (b) includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society, gathering or meeting; and
- (c) includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering or meeting.

A lodge, chapter, society, trust, gathering or meeting as defined above, should not be regarded as a secret society if it forms part of the activity of generally recognised religion'.

6. Beneficial interest in land or property excludes the employee's own dwelling and only relates to land and property within the authority's boundary.
7. The intention to bid for the purchase of land or property owned by the Council should be made as soon as is practicable. Section 117 of the Local Government Act also requires that the interest be declared to the Departmental Chief Officer who shall also inform The Chief Officer.

*Officer Code of Conduct*

8. Please specify interest and nature of interest.
9. The holding of shares or other securities, in a company or other body with whom the authority contracts or is considering contracting, must be declared if the holding exceeds £25,000 or more than 1/100th of the nominal value of the issued share capital, whichever is less. The size and nature of the holding need not be declared, simply the name of the company. This requirement does not extend to banks or building societies.

## INSIDER DEALING

- \* Insider Dealing was first made a criminal offence by the Companies Act 1980. The reason for this was to protect public confidence in the market and to prevent those with inside knowledge cheating others in their dealing with them. The old law was criticised for being complex, now, insider dealing is covered by Part V of the Criminal Justice Act 1993.
- \* There are 3 types of insider dealing:
  - \* Actual dealing
  - \* Encouraging others to deal
  - \* Disclosing inside information
- \* There are 2 types of insider:
  - \* Primary insider who has the information because of their status
  - \* Tippee
- \* For information to be classified as inside information all the following criteria must be satisfied.
  - \* The information must relate to a particular security or issuer of securities and not to securities generally
  - \* The information must be specific or precise
  - \* The information must not have been made public
  - \* If the information is to be made public, the information would significantly affect the share price
- \* Defences against accusations of dealing or encouraging others to deal are:
  - \* A profit was not expected
  - \* The information has been widely disclosed enough
  - \* The individual would have acted in the same way even if they did not have the information
- \* Defences against accusations of disclosing are:
  - \* The discloser did not expect anyone to deal
  - \* The discloser did not expect the deal to result in profit
- \* The internal policing of inside information is currently not built into any fraud strategies. There are no existing strategies that lend themselves to incorporate arrangements for identifying inside information.

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**Report of the Assistant Chief Executive (Corporate Governance)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Code Of Practice For The Determination Of Licensing Matters**

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**Electoral wards affected:**

**Specific implications for:**

Ethnic minorities

Women

Disabled people

Narrowing the gap

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**Executive Summary**

This is the report of the Assistant Chief Executive (Corporate Governance) to the Standards Committee in relation to the Code of Practice for the Determination of Licensing Matters.

The report proposes that there be a formal amendment to the Code of Practice to include a Protocol For Licensing Site Visits. The need for the Protocol is summarised prior to a recommendation being made that the Standards Committee approve the Protocol as part of the Code.

## **1.0 Purpose of this Report**

- 1.1 This report advises Standards Committee of the need amend to the Code Of Practice For The Determination Of Licensing Matters ("the Code") to include the Protocol For Licensing Site Visits ("the Protocol").
- 1.2 The proposed revised Code is attached to this report at **Appendix 1**.

## **2.0 Background Information**

- 2.1 A Code of Practice for determining licensing matters was approved by the Standards Committee on 31 March 2005. The Code was developed following the expansion of licensing activity within Leeds as the Council took responsibility for the licensing of alcohol previously undertaken by the Magistrates Court and the licensing of hot food served between 11.00pm and 5.00am. Since the Standards Committee approved the Code of Practice the Council's remit in relation to licensing matters has expanded yet further as the Council has taken over responsibility for the licensing of various forms of gambling under the Gambling Act 2005.
- 2.2 Paragraph 18 of the Code deals with monitoring and review. It provides for an Annual Report to the Standards Committee regarding the arrangements set out in the Code, whether these have been complied with, the number of complaints about breaches and so forth.
- 2.3 In April 2009 the Standards Committee received an Annual Report regarding the Code of Practice for the determination of licensing matters for the municipal year 2008 - 2009. The Standards Committee will recall that at paragraph 3.6 of this report it was drawn to the attention of Members that the Licensing Procedure Rules, which govern hearings conducted under the Licensing Act 2003 had been amended to include a Site Visit Protocol. This Protocol was approved by the Licensing Committee on 3 June 2008.
- 2.4 The need for the Protocol was identified following the implementation of the Gambling Act 2005 where the location of the premises is more of a pertinent issue. This had not been the experience of officers under the Licensing Act 2003 despite the volume of premises being far greater. The Protocol was needed to clarify a number of issues identified between Members and officers and by inserting it into the Licensing Procedure Rules, represented the swiftest manner in which to implement the new procedures.
- 2.5 At paragraph 7.1 of this Report, Members of the Standards Committee were asked to:
- "consider the assurances contained within the Report and advise as to whether further amendments are required to the Code of Practice for the determination of licensing matters".*
- 2.6 Members of the Standard Committee on 21 April 2009 resolved that no amendments were required to the Code.
- 2.7 On reflection officers have concluded that the Protocol for Licensing Site Visits should form part of the Code and not the Licensing Procedure Rules and have recommended that the Protocol be approved as part of the Code in the interests of good governance.

### **3.0 Main Issues**

- 3.1 The draft Protocol was proposed to Members of the Licensing Committee on 3 June 2008 by way of a report. Members had previously expressed a desire to have a facility to undertake visits with regards to applications under the Licensing Act 2003 as well as those proposed by the Principal Gambling Officer for applications submitted under the Gambling Act 2005.
- 3.2 To this end a draft Protocol for licensing site visits was placed before Members. A final version of the Protocol was approved by Members.
- 3.3 Members of the Licensing Committee in exercising their discretion to make site visits will therefore have regard to this Site Visit Protocol. However, without the correct and formal adoption of this Protocol as a revision to the Code, site visits carried out under the Protocol may be subject to legal challenge.

### **4.0 Implications for Council Policy & Governance**

- 4.1 It is in the interests of good governance that Members determining licensing matters have a robust Code. Not only must the Code be fit for purpose but it should be adopted in the correct way to avoid legal challenge.

### **5.0 Legal & Resource implications**

- 5.1 Ensuring the Code is up to date will assist the Council in ensuring that determinations are sound and able to withstand challenges made on a procedural basis.
- 5.2 There are no resource implications to this report.

### **6.0 Conclusions**

- 6.1 The proposal to adopt the revised Code will ensure Members retain the ability make robust yet lawful decisions.

### **7.0 Recommendations**

- 7.1 Members are asked to:
- Note the contents of this Report; and
  - Approve the revised Code of Practice for the Determination of Licensing Matters, as attached at Appendix 1.

### Background Documents

None.

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**CODE OF PRACTICE FOR THE DETERMINATION OF LICENSING MATTERS****1.0 BACKGROUND**

- 1.1 This Code of Practice for the determination of licensing matters substantially follows the Guidance produced by LACORs (Local Authority Co-ordinators of Regulatory Services) in consultation with the Standards Board for England, the Association of Council Secretaries and Solicitors (ACSeS), the Association of London Government (ALG) and the Society of Local Authority Chief Executives (SOLACE) for Licensing Committee Hearings under the Licensing Act 2003 (Updated October 2007).

**2.0 SCOPE**

- 2.1. This code **applies** to all licensing decisions including  
 Decisions of the Licensing and Regulatory Panel  
 Decisions of the Licensing Committee  
 Decisions of any Licensing Sub committee  
 Delegated decisions within the terms of reference of the above bodies

All decisions made by the above bodies will be referred to within this code as decisions of the licensing authority

This code **also applies** at all times when Members are involved in the licensing process. This includes taking part in decision making meetings of the Council in exercising the functions of the licensing authority and on less formal occasions such as meetings with officers or the public and consultative meetings. It applies as equally to licensing enforcement matters, reviews, or site specific issues as it does to licensing applications.

- 2.2 **The aim of this code of good practice is** to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 2.3 Sections 3-5 apply to all Members. Sections 6-14 apply particularly to Members of the Licensing Committee or Licensing and Regulatory Panel. Sections 15-16 apply to officers. Sections 17-19 deal with procedures, monitoring and review
- 2.4 **If you have any doubts** about the application of this Code, you should seek early advice, preferably well before any meeting takes place from the Assistant Chief Executive (Corporate Governance).

**3.0 RELATIONSHIP WITH THE MEMBERS CODE OF CONDUCT**

- 3.1 Leeds City Council's Members Code of Conduct was adopted by the Council on the 24th May 2007 and must be complied with throughout the decision making process.

**Do** apply the rules in the Members Code of Conduct first and at all times.

**Do** then apply the rules of this Code which seek to explain and supplement the Members Code of Conduct for the purposes of licensing. If you do not abide by this Code you may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision; and
- yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Members Code of Conduct, a complaint being made to the Standards Committee.

#### **4.0 DECLARATIONS OF INTERESTS UNDER THE MEMBERS CODE OF CONDUCT**

4.1 It is your responsibility to declare any personal or prejudicial interest you may have, or be perceived as having, in a matter at any relevant meeting, including informal meetings or discussions with officers and other Members preferably at the beginning of the meeting. You should declare the existence and nature of that interest.

**If your personal interest** in a matter arises due to solely from your membership of, or position of control/ management on:

- Any other body to which you were appointed or nominated by the authority;
- Any other body exercising functions of a public nature (for example another local authority).

The Model Members Code of Conduct states<sup>1</sup> that in these cases, provided that you do not also have a prejudicial interest, you only need to declare that interest if you intend to speak on the matter.

**If you have** a personal or prejudicial interest in a matter do then act accordingly depending on the interest that you have declared.

**Where your interest is personal and prejudicial** you should withdraw from the room or chamber where the meeting is being held:-

**Do not** participate or give the appearance of trying to participate in any part of the meeting which involves the matter in which you have a prejudicial interest. You may however make representations, answer questions on a matter or give evidence on a matter if the public also have the right to do so<sup>2</sup>. You only have the same right as the public to make representations You will be brought into the meeting when the other parties are called in. You will be subject to the same time limits as all other parties and have the same rights i.e. to make representations, give evidence and answer questions but not to cross examine other parties You must leave the room immediately after making representations, answering questions or giving evidence

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<sup>1</sup> Paragraph 9(2) Model Code of Conduct for Members

<sup>2</sup> Paragraph 12(2) Model Code of Conduct for Members  
Part 5 (l)

and must take no part in the decision making. If the public have no right to make representations, answer questions on a matter or give evidence on a matter then you must withdraw from the meeting room when the matter in which you have a prejudicial interest is discussed.

Where you have a prejudicial interest in the matter is to be determined by a Licensing Sub Committee you should ensure that you have arranged for a substitute to attend the hearing in your place as although you may have a right to make representations, answer questions on a matter or give evidence on a matter you are not able to take part in the decision.

**Do not** get involved in the processing of the application.

**Do not** seek to improperly influence a decision on a matter in which you have a prejudicial interest. Not all attempts to influence a decision will be improper. Improper influence would be any attempt to use your position to further your own interests in a way that would not be open to an ordinary member of the public. Do not seek or accept any preferential treatment or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a Councillor.

**Do** be aware that, whilst you are not prevented from seeking to explain or justify a proposal in which you have a personal or prejudicial interest to an appropriate officer, the Code places greater limitations on you than would apply to an ordinary member of the public and sensible steps must be taken to ensure openness and fairness in the decision making process. In particular you should:

- Notify the Monitoring Officer in writing of your own application (or that of a relative or employer where known) or where you are employed as an agent.
- Consider whether it is advisable to employ an agent to act on your behalf in dealing with officers and any public speaking at a licensing hearing.

## **5.0 MEMBERS SPEAKING AT LICENSING HEARINGS**

5.1 All Members of the Council should be aware of the planning case involving a North Yorkshire Councillor, Councillor Richardson. The Councillor was not a member of the Planning Committee but sought to represent the views of his constituents. However his property was affected by the application and the Standards Board for England disqualified him from being a Councillor on the basis that he did not disclose a Personal and Prejudicial interest even though he was not the decision maker and was making representations as either the ward member or in an individual capacity. The Court of Appeal upheld the Standards Board decision.

As a result of this case the Model Members Code of Conduct was amended and now provides that you can make representations, answer questions on a matter or give evidence on a matter in which you have a prejudicial interest if the public also have the right to do so. You must leave the room immediately after making representations, answering questions or giving evidence.

You only have the same right as the public to make representations. You will be brought into the meeting when the other parties are called in. You will be subject to the same time limits as all other parties and have the same rights i.e. to make representations, give evidence and answer questions but not to cross examine other parties. You must not remain in the room when the decision is made even if you are not making the decision.

## **6.0 BIAS AND PREDETERMINATION IN THE LICENSING PROCESS**

6.1 Given the requirement that Members of the Licensing and Regulatory Panel or Licensing Committee or Sub committee should exercise an independent mind and decide proposals in accordance with the relevant licensing considerations, Members must not favour any person, company, group or locality or commit themselves to a particular point of view on a licensing application prior to its full consideration at the Licensing and Regulatory Panel or Licensing Committee or Sub committee.

**Do not** make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the decision making meeting and of your hearing the officer's presentation and the evidence and arguments on both sides.

**Do** be aware that you are likely to be biased or pre-determined where the Council is the landowner or applicant **if** you have been or are perceived as being, a chief advocate for the proposal. This will not necessarily arise from being a member of the proposing board or the Executive but through a significant personal involvement in preparing or advocating the proposal by which you may be perceived as being unable to act impartially or determine the proposal purely on its licensing merits and in the public interest.

**Do remember** that you are, of course, free to listen to a point of view about a licensing proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate licensing officer.

**Do not** use any political group meetings prior to the Licensing and Regulatory Panel or Licensing Committee or Sub committee meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Licensing Officer's report and documents and information considered at the Hearing.

**The Standards Board for England** have provided advice and guidance on bias and pre-determination which can be obtained from [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).

## **7.0 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES**

7.1 This section concerns the position of Members of Leeds City Council who are also Parish Councillors or members of an outside body. These should be recorded on your register of interests.

**Do** consider if you have a prejudicial interest in a matter by virtue of you being a member of the Parish Council or a Member of the outside body. If the matter affects the financial position of the Parish Council or outside body, or the matter relates to an application made by the Parish Council or outside body then it is capable of being a prejudicial interest.<sup>3</sup> (If the matter does not affect the financial position or relate to an application made then it cannot be a prejudicial interest)

If the matter is capable of being a prejudicial interest then you should go onto consider whether the interest is one that a member of the public with knowledge of all the relevant facts would reasonable regard as so significant that it would be likely to prejudice your judgement of the public interest.<sup>4</sup>

**Do not** take part in the licensing decision making process but withdraw from the meeting or arrange a substitute when you have a prejudicial interest in that matter by virtue of you being on the Parish Council or a member of the outside body. (However you may make representations, answer questions on a matter or give evidence on a matter if the public also have the right to do so)

**Do** consider yourself able to take part in a licensing debate and vote on a proposal at a meeting of the Parish Council or outside body is a consultee provided:

- The proposal does not substantially affect the well being or financial standing of the consultee body.
- You make it clear that that you are keeping an open mind and may vote differently at the licensing hearing when full details are available.
- You do not commit yourself so far to a particular point of view that you cannot be considered as open to persuasion at a licensing hearing when the proposal is decided.
- You disclose a personal interest regarding your membership or role when the proposal comes to a licensing hearing.

## **8.0 AREA COMMITTEES**

8.1 The introduction of Area Committees within Leeds City Council also requires recognition of the “Dual Hatted” roles which members of the Licensing Committee or Licensing and Regulatory Panel and Area Committees must consider. It is unlikely you would have a Personal and Prejudicial Interest for the purpose of the Members Code of Conduct purely by being a member of the Area Committee but there is a possibility that you may be considered as pre determining a matter if you have spoken in support or against it or are closely associated with such a decision taken at the Area Committee.

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<sup>3</sup> Paragraph 10(2) Model Code of Conduct for Members

<sup>4</sup> Paragraph 10(1) Model Code of Conduct for Members

**Do** consider whether it is appropriate for you to speak at the Area Committee if you wish to speak also on the application at a licensing hearing.

**Do** consider, whatever your own views, whether as Chair of the Area Committee or a member of any Panel, Committee or Sub Committee, you would be so closely associated with that decision that it would be unreasonable to expect you to disregard it.

**Do** remember that you can speak and vote on an application which is before the Area Committee for consultation so long as you make it clear that you have only formed a provisional view and will still approach the issue with an open mind and be open to persuasion when the matter is discussed at the licensing hearing.

**Do** remember that it is not always sufficient to make such a statement if it is not demonstrably genuine. The more controversial the application and or the more vehemently you have supported or opposed it, the more difficult it will be to show that you have not predetermined the matter and therefore render the decision susceptible to challenge. In those circumstances you should not attend the hearing for that application.

## **9.0 SPOUSE/PARTNER COUNCILLORS**

9.1 There may be occasions when the spouse or partner of a Member, usually a member for the same Ward, is also a Member of the Licensing Committee or Sub Committee or the Licensing and Regulatory Panel. That Member might quite properly refer constituents who wish to make representations to his or her spouse or partner rather than be directly lobbied. Generally the fact that the spouse or partner Councillor has been approached will not affect your ability to speak and vote at a licensing hearing.

**Be** aware that the Members Code of Conduct defines that you have a personal interest in any business of the authority where a decision in relation to that business might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision.

**Relevant person**<sup>5</sup> includes your spouse or partner.

**Acknowledge** that in certain circumstances, such as a particularly controversial application in the run up to an election, there is the possibility that a Personal and Prejudicial interest could exist.

**Consider** if your spouse or partner is so closely involved with the support for, or opposition to, an application that a member of the public might reasonably think that the involvement is such that you must be biased or have predetermined the application.

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<sup>5</sup> Paragraph 8(2) Model Code of Conduct for Members  
Part 5 (I)  
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## **10.0 EXECUTIVE BOARD MEMBERS**

- 10.1 There is no Constitutional or legal reason why an Executive Board Member should not also be a Member of the Licensing and Regulatory Panel or Licensing Committee and take part in the decision making processes which are not part of the executive function.

**Be** aware that you should not speak or vote on any matter which you have discussed at Executive Board unless you have demonstrated there and can do so at the licensing hearing that you have not predetermined the application.

**Do not** take part in any meeting of the Licensing and Regulatory Panel or Licensing Committee or Sub Committee on a matter in which you may have been seen as advocating a proposal as an Executive or Deputy Executive Member.

## **11.0 CONTACT WITH APPLICANTS AND OBJECTORS**

- 11.1 In order to maintain impartiality, it is preferable that Members are not involved in pre-application discussions but there will be occasions when this can be unavoidable. The following guidance is given:

**Do not** agree to any formal meeting with applicants, or groups of objectors where you can avoid it. Where you feel that a formal meeting would be helpful in clarifying the issues, you should not arrange it yourself, but request the Licensing Officer to do so. The officer will then ensure that those present are aware that any discussion will not bind the Council and maintain a written file record of the meeting.

**Do** refer those who approach you for advice to officers.

**Do** follow the rules on lobbying

**Do** report any significant contact with the applicant or other parties to the Assistant Chief Executive (Corporate Governance) explaining the nature and purpose of the contacts and your involvement and ensure that this is recorded on the licensing file.

**Do not** attend a presentation by an applicant unless an officer is present and/or it has been arranged by an officer.

**Do** ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other members might vote.

**Do** make it clear that the presentation is not part of the formal decision making process and any view is both personal and provisional since not all relevant information will be to hand and the views of interested parties will not have been obtained.

## 12.0 MEMBERSHIP OF A LOBBY GROUP

12.1 Lobbying by Councillors is a legitimate activity but in the case of Members of the Licensing and Regulatory Panel or Licensing Committee or Sub Committee significant care needs to be taken to avoid any challenge of bias or predetermination or an allegation of bringing the Council into disrepute.

**Do** declare the existence and nature of your interest in any lobby group at a licensing hearing so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.

**Do** not take part in any matter that affects the financial position of the lobby group or that relates to the determination of any application for approval, consent, licence, permission or registration made by the lobby group of which you are a member. If the Licensing and Regulatory Panel or Licensing Committee or Sub committee is discussing such a matter you should consider whether you have a prejudicial interest and should act accordingly.

**You may** take part in a matter than involves issues upon which your lobby group has simply campaigned as long as your involvement has not resulted in you being biased and/or predetermining the matter. You will have personal interest in this matter as the lobby group should be registered on your register of interests and a personal interest arises when the matter directly affects the lobby group, or where the lobby group is otherwise concerned about the outcome of the matter.

**Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you are biased or have pre-determined a matter. The factors are:

- the nature of the matter to be discussed
- the nature of your involvement with the lobby group
- the publicly expressed views of the lobby group
- what you have said or done in relation to the particular issue

**Do not** lead, be part of the management of, or represent an organisation whose primary purpose is to promote or oppose licensing proposals. If you do, you may have fettered your discretion (be biased/pre-determined) and have to withdraw.

**Do not** become a member of an organisation whose primary purpose is to promote or oppose specific licensing proposals or those within a limited geographical area as you may be perceived as having fettered your discretion (be biased/pre-determined).

**Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals such as a local Civic Society but declare a personal interest where that organisation has made



representations on a particular proposal and make it clear to both the organisation and the Panel or Committee that you have not made up your mind on each separate proposal

**Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as being the Chairperson or a member of the Board or Committee, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may consider that you are biased and/or pre-determined and should withdraw from the meeting.

**Do not** excessively lobby fellow members regarding your concerns or views or attempt to persuade them that they should decide how to vote in advance of the hearing at which the decision is to be made. It is difficult to define 'excessively' but you need to consider whether a member of the public, knowing the facts would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.

**Do not** publicly support a particular outcome on a proposal or actively campaign for it if you wish to take part in the decision making process. Although in most circumstances this would not amount to a prejudicial interest, it would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the Application in accordance with the law.

## **13.0 SITE VISITS**

**13.1 Site Visits can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise.**

They are not to be used to determine a proposal prior to a hearing.

Due to the tight timescales involved in licensing decisions, site visits must be viewed as an exception rather than the rule

When undertaking a site visit Members should have regard to the following paragraphs of the Code of Practice for Determining Licensing Matters

- ❖ Paragraph 6 Fettering Discretion in the Licensing Process
- ❖ Paragraph 11 Contact with Applicants/Objectors

## **13.2 THIS SECTION APPLIES TO MEMBERS REQUESTS FOR A SITE VISIT**

- If a Member feels, on receipt of the report on an application that a site visit would be beneficial, s/he should first discuss their concerns with the Principal Licensing or Gambling Officer. Officers have powers to request additional information from

parties, which can then be discussed at the hearing. This information may resolve the issues without the need for a site visit. If a Member still feels that a site visit is necessary then, in the interest of fairness, it is preferable that concerns should be expressed at the scheduled hearing since Members may find that the applicant, interested parties or responsible authorities can provide verbal information to the satisfaction of the Members present.

- Views of the parties present must be canvassed and considered before a site visit is agreed since that is likely to result in a delay to the decision making.
- In the case of a Sub Committee hearing, three Members or a 2:1 majority must be in favour of a site visit for arrangements to be made. The same three Members will be expected to undertake the requested site visit and attend the hearing for the application, which will be re-convened at a later date
- In the case of a meeting of the Licensing Committee or the Licensing and Regulatory Panel, a majority of the Members present must be in favour of a site visit. The same Members will be expected to undertake the requested site visit and be able to attend the re-convened meeting which will consider the application subsequent to the site visit
- **DO** raise the need for a site visit at a hearing and be prepared to give reasons why it is of real benefit. The reason will be recorded in the Minutes.
- **DO NOT** request a site visit unless there is a real benefit from viewing the site.

This might arise where:-

- ❖ Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- ❖ There are significant policy or precedent implications and specific site factors need to be carefully addressed or
- ❖ Relevant factors cannot be fully ascertained from any supporting information or the plans submitted to the Licensing Officer and available at the hearing, to Members satisfaction

### **13.3 THIS SECTION APPLIES TO SITE VISITS AS PROPOSED BY OFFICERS**

- The Principal Licensing or Gambling Officer may suggest the Committee or a Sub Committee undertake a Site Visit without prior discussion at a hearing, where in the professional opinion of the Officer there is a real benefit from viewing the site.
- In such cases, officers will approach Members seeking a date for the site visit and hearing – usually in the form of an e-mail in the first instance

- The e-mail should set out the proposal for a site visit, the reasons behind the request; the projected benefit for Members; the address of the premise; the type of application and set out the arrangements for the day.
- In such cases it is usual for the site visit to commence at 9.30 am (departing from the Civic Hall) and for the formal meeting to commence at 11.00 am in the Civic Hall to determine the application. As such it is anticipated that hearings will not conclude until the afternoon.
- Having done this, officers will seek confirmation from the Members able to attend that they are happy to undertake the propose site visit

#### **13.4 ON THE SITE VISIT**

- DO ensure that any information gained from the site visit is reported back at the subsequent hearing.
  - DO ensure that you treat the site visit as an opportunity to seek information and to observe the site. It is not to be used to determine a matter prior to the hearing
  - DO ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
  - DO be prepared to listen to and ask questions of fact from the Applicant or other parties
  - DO be aware that Officers will make all parties aware of the site visit. All parties may attend subject to being granted access by the owner (see below). If only one party is present be particularly careful only to obtain information and ensure that that information is repeated at the public meeting where the other parties have a right to comment on it.
  - DO be aware that access to the site is at the discretion of the owner. The owner can legitimately refuse access to objectors and even Members. If access is to be refused consider whether it is still appropriate to undertake the visit.
  - DO NOT be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind
- Note that the decision can only be made at the Licensing Hearing and you should make this clear to any applicant or other party
- DO note comments of the applicant or other parties which are made solely for the purpose of making members aware of any specific local circumstances and issues relevant to the application site.
  - DO NOT express opinions or views to anyone which can suggest bias or predetermination.

As indicated above, you should make it clear that formal consideration of the proposal will take place in public at the subsequent hearing/meeting.

- **DO NOT** enter a site which is subject to an application otherwise than on a formal site visit although this does not prevent you from viewing the site from the highway or other publicly accessible area.

## **14.0 TRAINING**

**14.1** Members making licensing decisions must attend two training sessions each and every year: a Licensing Update session, to receive guidance in relation to regulations and procedures and a Governance and Conduct session for training on declaration of personal and prejudicial interests. Failure to undertake either or both sessions will result in the Elected Member being unable to sit on Licensing and Regulatory Panel or Licensing Committee or Sub Committee.

- **Do not** participate in decision making on licensing matters if you have not undertaken mandatory training.
- **Do** try to attend any other specialised training session provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures and Policies beyond the minimum required and assist you in carrying out your role properly and effectively.
- **Do** revisit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public, confidence in the licensing system, and can help with reviews of planning policies.

## **15.0 OFFICERS**

**15.1** Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Officers are employed by the Council and not by individual Councillors and instructions can only be given through a decision of the Council, the Executive or a Panel or Committee. A successful relationship can only be based on mutual respect, trust, courtesy and understanding of each others positions.

**15.2** The role of the Legal officer is to assist the panel in gathering evidence and understanding all relevant issues in order for Members to make a decision; to advise on the sub committees legal duties under the relevant legislation and on the admissibility of evidence.

**15.3** All legal advice should be given or repeated in open session for all parties to be made aware of

**15.4** The role of the Governance Officer is to facilitate the smooth running of

the hearing; advise on the Rules of Procedure and Regulations relating to hearings; make notes of the proceedings and reasons for granting or refusing applications and ensure that decision letters are sent to all parties as soon as possible after the hearing.

- 15.5 The role of the Licensing Officer is neutral. They will make no recommendations to the Panel or Committee and attend hearings only to provide a summary report of the application, giving details of the representations received and any relevant legislative or policy considerations.

**Do not** put pressure on officers to put forward a particular recommendation.

**Do** recognise that officers are part of a management structure and only discuss an application, outside of any arranged meeting with those officers who are authorised to deal with the application at Member level.

**Do** recognise and respect that officers involved in the processing and determination of licensing application must act in accordance with the Council's Code of Conduct for Officers. As a result, officers reports will be presented on the basis of their overriding obligation of professional independence

## **16.0 RELATIONSHIP WITH THE OFFICER CODE OF CONDUCT**

- 16.1 The Council has an approved Officer Code of Conduct.

That Code applies at all times when officers are involved in the licensing process. This includes decision making by officers under delegated powers and attendance at meetings whether those are formal decision making meetings or informal meetings with members or the public.

Officers must apply the rules in the Officer Code of Conduct at all times. If they do not they may put the Council at risk of proceedings on the legality maladministration of any related decision put themselves at risk of disciplinary action.

- 16.2 Generally licensing officers have little discretion in making licensing decisions. For example they may only grant licences where there are no objections. However there may be situations where they are called upon to exercise discretion such as deciding whether an objection is relevant. Other officers such as those employed by Environmental Health or Development have discretion on whether to object. Legal officers and committee clerks remain in the room with Members when decisions are made.

In all cases officers must avoid any improper conduct or occasion for suspicion of the appearance of improper conduct and should:-

- Ensure that they have given notice of any financial interest in any contract which has been or is proposed to be entered into by the Council
- Not accept gifts, entertainment, hospitality or any benefits in kind as set out in the Officers Code of Conduct

## *Code of Practice for Determining Licensing Matters*

- Declare to their Director by completing the Register of Interests Form any personal interests which may conflict with licensing applications such as
  - any involvement with an outside organisation which has an interest in any licensing application
  - any financial interest in any licensing application
  - any other interest where others may think that a conflict of interest may arise
  - Examples of such situations include where the officer lives adjacent to any licensed premises or visits the premises in a personal capacity on a regular basis

| 16.3 Officers should also consider whether their spouse, partner or close relative has a financial or other interest in a licensing application which may give rise to the suspicion of the appearance of improper conduct and where the officer may therefore need to declare an interest.

| 16.4 Where an officer has declared an interest he or she should not participate in the processing of a licensing application but should instead refer the matter to his or her Manager who will arrange for another officer to discharge the duties.

### | 17.0 PROCEDURES AT LICENSING HEARINGS

| 17.1 Procedure Rules exist for hearings before the Licensing Committee and Sub committees. Hearings before the Licensing and Regulatory Panel will be governed by the Council Procedure Rules as they apply to Regulatory Panels.

### | 18.0 MONITORING AND REVIEW

| 18.1 The Assistant Chief Executive (Corporate Governance) will report annually to the Standards Committee regarding whether the arrangements set out in this Code have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.

| 18.2 In particular, the Assistant Chief Executive (Corporate Governance) shall monitor the following:-

- the number of complaints made about breaches of the Code and the outcome of those complaints
- the number of appeals upheld
- any external inspection reports in respect of relevant issues
- any ombudsman complaints or reports in respect of relevant issues

### | 19.0 BREACHES OF THE CODE OF PRACTICE

| 19.1 Maintaining high ethical standards enhances the general reputation of the Council, its Members and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Licensing Code, along

with Leeds Council's Members Code of Conduct, and the Officer Code of Conduct are intended to promote these standards.

**Do** be aware of your responsibilities under this Code and the Members Code of Conduct

**Do** report any apparent breaches of either Code to the Monitoring Officer.

**Do** seek advice if you are in doubt.

- 19.2 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee – Assessment Sub-Committee who can, in certain circumstances disqualify a Councillor. Failure to comply with this Licensing Code may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.
- 19.3 Allegations of breach of this Licensing Code of Practice by Members may be referred to the Assistant Chief Executive (Corporate Governance) for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the Party.
- 19.4 Allegations of breach of this Licensing Code by Officers will be referred to the relevant Director for consideration under the Council's Disciplinary Procedure.

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Originator: Amy Kelly

Tel: 0113 39 50261

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**Report of the Assistant Chief Executive (Corporate Governance)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Proposed amendments to the Standards Committee Procedure Rules**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**Executive Summary**

1. The purpose of this report is to propose a series of amendments to the Standards Committee Procedure Rules to make them more accessible to subject Members and complainants, and more accurately reflect the distinct roles of the Standards Committee and its Sub-Committees throughout the complaints process.
2. In order to satisfy the Key Lines of Enquiry within the Use of Resources section of the Comprehensive Area Assessment, the Council will need to demonstrate that its Standards Committee is effective in fulfilling its three distinct roles in relation to local assessment (namely: Assessment and Review; Consideration; and Hearings). It is therefore proposed that these distinct roles are separated more clearly within the Procedure Rules to make the roles of the Standards Committee and its Sub-Committees clear. Information regarding how local complaints will be dealt with has also been added to a separate section as this is a distinct process.
3. The Council will also need to show that the Standards Committee effectively communicates the arrangements for dealing with complaints about Members. The amended Procedure Rules have been shortened and structured more clearly in order to make them more accessible to subject Members and complainants.
4. Members of the Standards Committee are asked to approve the amendments to the Standards Committee Procedure Rules attached as Appendix 1.

## **1.0 Purpose Of This Report**

- 1.1 The purpose of this report is to propose a series of amendments to the Standards Committee Procedure Rules to make them more accessible to subject Members and complainants, and more accurately reflect the distinct roles of the Standards Committee and its Sub-Committees throughout the complaints process.

## **2.0 Background Information**

- 2.1 The Standards Committee last reviewed its Procedure Rules in July 2009. The Standards Committee decided to make several minor amendments to the pre-hearing process as well as create a Hearings Sub-Committee to conduct hearings into potential breaches of the Members' Code of Conduct.
- 2.2 Standards for England released guidance on Standards Committee Determinations in August 2008. As part of this guidance Standards for England have also issued a model hearings procedure. Several amendments to the Standards Committee Procedure Rules were suggested in the report in July 2009 in order that they would reflect the model hearings procedure more closely. However, further experience of the complaints process (including the consideration of two final reports in August 2009) has demonstrated that further amendments are now required.
- 2.3 In order to satisfy the Key Lines of Enquiry within the Use of Resources section of the Comprehensive Area Assessment, the Council will need to demonstrate that its Standards Committee is effective in fulfilling its three distinct roles in relation to local assessment (namely: Assessment and Review; Consideration; and Hearings). It is therefore proposed that these distinct roles are separated more clearly within the Procedure Rules to make the roles of the Standards Committee and its Sub-Committees clear. Information regarding how local complaints will be dealt with has also been added to a separate section as this is a distinct process.
- 2.4 The Council will also need to show that the Standards Committee effectively communicates the arrangements for dealing with complaints about Members. The amended Procedure Rules have been shortened and structured more clearly in order to make them more accessible to subject Members and complainants.

## **3.0 Main Issues**

### **Proposed amendments to the Standards Committee Procedure Rules**

- 3.1 The amended version of the Standards Committee Procedure Rules is attached as Appendix 1. The rules have been reformatted in order to make them clearer and more accessible, including a contents list for ease of use. Separating the distinct stages of the complaints process in this way will also mean that the subject Member need only be sent the relevant part of the Procedure Rules when they are contacted about their complaint, which should make the process easier to understand.
- 3.2 The following paragraphs highlight the main changes in the Procedure Rules. It has not been possible to show the changes in the appendix itself due to the restructuring of the document.

#### Proposed amendments within Section 2

- 3.3 Appropriate reference has been made in paragraph 2.1.5 to the possibility that a complainant may ask the Assessment Sub-Committee to withdraw a complaint, and

an extra appendix has been added to the Procedure Rules (Appendix C) to outline what factors the Sub-Committee will consider when making this decision.

- 3.4 In paragraphs 2.2 and 2.4 the names of the documents have been amended so that they reflect how these documents are referenced within Leeds City Council, rather than their names within the Act and Regulations. However appropriate footnotes have been included in order to ensure that the link with the requirements of the Act and Regulations is maintained.
- 3.5 Paragraph 2.5 has been added to make reference to the Standards Committee's decision that the Assessment and Review Sub-Committees will now produce minutes of their meetings to be published on the Council's website. This section also outlines what information should and should not be included in those minutes.
- 3.6 Amendments have been made to paragraph 2.7.6 to reflect the decision that reports written by the Monitoring Officer in relation to the outcome of any direction to take other action should be received by the Assessment Sub-Committee rather than the full Standards Committee, and that this Assessment Sub-Committee should, wherever possible, be made up of the same Members who originally considered the complaint.
- 3.7 Paragraph 2.8.3 makes reference to the Monitoring Officer ensuring that investigations are carried out in accordance with the Council's adopted procedure on external investigations (this is also referenced in Section 1). The brief references to the investigation procedure have been removed from the Standards Committee Procedure Rules as the investigation of complaints is not one of the Standards Committee's responsibilities. Instead officers have developed a separate procedure which external investigators will be asked to agree to before undertaking any investigation.

#### Proposed amendments within Section 3

- 3.8 More information has been added within paragraph 3.3 to explain the possible outcomes of an investigation carried out by an Ethical Standards Officer. This includes a new reference in paragraph 3.3.6 to the Ethical Standards Officer's power to request that the Standards Committee receives a copy of their final report if they believe it will assist the Committee in the discharge of its functions as prescribed in Part III of the Local Government Act 2000.

#### Proposed amendments within Section 4

- 3.9 Several amendments have been made to the section regarding the pre-hearing process, including changes to reflect the decisions made at the last meeting of the Standards Committee:
- That certain matters within the pre-hearing process should be delegated to the Monitoring Officer to decide in conjunction with the Chair (reflected in 4.2.7 and 4.2.8);
  - That the Chair of the Hearings Sub-Committee should normally be the Chair of the Standards Committee or their nominee (reflected in 4.2.2); and
  - That the Monitoring Officer may make preliminary decisions on certain matters in the pre-hearing process, but which need to be confirmed by the Hearings Sub-Committee at the start of the hearing (reflected in 4.2.9).

- 3.10 In addition, the Members' Information Form (paragraph 4.2.3) and the Investigator's Information Form (4.2.6) have been removed as appendices to the Procedure Rules. The questions contained in these forms are already listed within the Rules themselves and therefore there is no need to include the blank forms themselves.
- 3.11 Paragraph 4.5, which deals with the recording of hearings, has been amended to include more detail and the corresponding appendix has been removed.
- 3.12 The guidance on sanctions and the list of sanctions open to the Standards Committee has also been removed as an appendix to the Procedure Rules and instead the sanctions are listed within paragraph 4.12.3. Appropriate reference is made in paragraph 4.12.2 to the guidance available to the Hearings Sub-Committee on which sanctions to apply. This will also ensure that the Hearings Sub-Committee is always provided with the most up to date guidance.

#### Proposed amendments to Section 5

- 3.13 The definition of the Local Code/Protocol in paragraph 5.1 has been amended to delete the reference to Members' six monthly reports. Members are no longer required to produce such reports and so it is not possible for a complaint to arise in relation to such a report. References to these reports have already been removed from the Standards Committee and Hearings Sub-Committee Terms of Reference.
- 3.14 Members attention is also drawn to an item on the work programme for the next meeting of the Standards Committee regarding the enforcement of local codes and protocols.

### **4.0 Implications For Council Policy And Governance**

- 4.1 In order to satisfy the Key Lines of Enquiry within the Use of Resources section of the Comprehensive Area Assessment, the Council will need to demonstrate that its Standards Committee is effective in fulfilling its three distinct roles in relation to local assessment (namely: Assessment and Review; Consideration; and Hearings). It is therefore proposed that these distinct roles are separated more clearly within the Procedure Rules to make the roles of the Standards Committee and its Sub-Committees clear. Information regarding how local complaints will be dealt with has also been added to a separate section as this is a distinct process.
- 4.2 The Council will also need to show that the Standards Committee effectively communicates the arrangements for dealing with complaints about Members. The amended Procedure Rules have been shortened and structured more clearly in order to make them more accessible to subject Members and complainants.

### **5.0 Legal And Resource Implications**

- 5.1 There are no legal or resource implications to this report.

### **6.0 Conclusions**

- 6.1 The amended version of the Standards Committee Procedure Rules is attached as Appendix 1. The rules have been reformatted in order to make them clearer and more accessible, including a contents list for ease of use. Separating the distinct stages of the complaints process in this way will also mean that the subject Member need only be sent the relevant part of the Procedure Rules when they are contacted about their complaint, which should make the process easier to understand.

6.2 Paragraph 3 of this report highlights the proposed amendments to the Procedure Rules.

## **7.0 Recommendations**

7.1 Members of the Standards Committee are asked to approve the amendments to the Standards Committee Procedure Rules attached as Appendix 1.

### Background Documents

- Key Lines of Enquiry within the Use of Resources section of the Comprehensive Area Assessment
- Standards for England Guidance on Standards Committee Determinations
- Report to Standards Committee 'Proposals for the Creation of a Consideration and Hearings Sub-Committee', 8<sup>th</sup> July 2009

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# **STANDARDS COMMITTEE PROCEDURE RULES**

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## STANDARDS COMMITTEE PROCEDURE RULES

### 1.0 GENERAL

#### 1.1 INTERPRETATION

“Authority” means Leeds City Council;<sup>1</sup>

“Chair” means the Chair of the Committee<sup>2</sup> who must be an Independent Member of the Committee;

“Code of Conduct” means the Members Code of Conduct adopted by the Authority;<sup>3</sup>

“Committee” means the Standards Committee or the relevant Sub-Committee with power to discharge the function referred to;

“Complainant” means the person who made the complaint;

“day” means a clear working day unless otherwise indicated;

“Complaint” means a written allegation that a Member has breached the Members Code of Conduct;<sup>4</sup>

“Initial Assessment” means the process of initially assessing complaints that is carried out by the Assessment Sub-Committee;

“Review Request” means a request to review the decision of the Assessment Sub-Committee to take no action in relation to a Written Allegation;<sup>5</sup>

“Review” means a review of a decision to take no action in relation to a complaint that is carried out by the Review Sub-Committee;

“Investigation” means an investigation by the Monitoring Officer or their representative, or by an ESO into a complaint;

“ESO” means the Ethical Standards Officer appointed by Standards for England or the ESO’s nominee;

“Investigator” means the Monitoring Officer or their nominee, or the ESO;

“Legal Advisor” means the person providing legal advice to the Committee;<sup>6</sup>

<sup>1</sup> 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.

<sup>2</sup> Or other Member elected by the Committee in the absence of the Chair.

<sup>3</sup> Under Section 51 of the Local Government Act 2000.

<sup>4</sup> Made under Section 57A of the Local Government Act 2000

<sup>5</sup> Made under Section 57B of the Local Government Act 2000

<sup>6</sup> 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.

“subject Member” means the Member or co-opted member<sup>7</sup> of the Authority, or any Parish Council in the Leeds area, who is the subject of the complaint of misconduct. It also includes the Member’s nominated representative where the context requires this;

“Parish Council” means any Town or Parish Council;

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

“The Act” means the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007;

“The Regulations” means the Standards Committee (England) Regulations 2008 (SI. 2008 No. 1085).

## **1.2 SCOPE OF THIS PROCEDURE**

- 1.2.1 This procedure applies to complaints that a Member may have breached the Members’ Code of Conduct, and outlines the role of the Standards Committee and its Sub-Committees in assessing and considering such complaints.
- 1.2.2 There are separate procedures which make arrangements for the receipt of complaints and their preparation for the Assessment and Review Sub-Committees, and also outline how complaints will be investigated. These procedures will be maintained and kept under review by the Monitoring Officer.
- 1.2.3 The general principles of conduct<sup>8</sup> and the local Codes and Protocols will be used by the Standards Committee as a guide to interpretation of the Code of Conduct.
- 1.2.4 The Standards Committee should have regard to any relevant guidance issued by Standards for England when applying these Procedure Rules.

## **1.3 REVIEW OF THIS PROCEDURE**

- 1.3.1 The Standards Committee will review Section 4 of this procedure (Hearings Sub-Committee Procedure) at the completion of each local hearing.
- 1.3.2 In addition, the Monitoring Officer will report to the Standards Committee annually on whether the arrangements set out in the Standards Committee Procedure Rules have been complied with, and will include any proposals for amendment in the light of any issues that have arisen during the year.

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<sup>7</sup> As defined in Section 47 Local Government Act 2000. It also includes a former member or co-opted member.

<sup>8</sup> As set out in the Relevant Authorities (General Principles) Order 2001.

## **2.0 ASSESSMENT AND REVIEW OF COMPLAINTS OF MISCONDUCT AGAINST MEMBERS**

### **2.1 THE ASSESSMENT SUB-COMMITTEE**

- 2.1.1 The initial assessment of complaints is carried out by the Assessment Sub-Committee. The Assessment Sub-Committee will aim to consider complaints within an average of 20 working days.
- 2.1.2 When carrying out the initial assessment of complaints made under Section 57A Local Government Act 2000 the Assessment Sub-Committee is a closed meeting and is not subject to the notice and publicity requirements under Part 5A of the Local Government Act 1972.<sup>9</sup>
- 2.1.3 The Assessment Sub-Committee will apply the Assessment Criteria at Appendix A to this procedure when deciding what action should be taken in respect of a complaint .
- 2.1.4 The Assessment Sub-Committee will apply the criteria for granting requests for anonymity at Appendix B when deciding whether to allow a complainants request for anonymity.
- 2.1.5 The Assessment Sub-Committee will consider the criteria for considering requests to withdraw a complaint at Appendix C when deciding whether to allow the complainant to withdraw their complaint before a decision is taken on it.
- 2.1.6 The Assessment Sub-Committee should only take into consideration the information contained in the agenda papers or provided to it by the Monitoring Officer and the Clerk at the meeting in order to make its decision.
- 2.1.7 The Assessment Sub-Committee will make one of the following decisions in relation to the complaint:<sup>10</sup>
- To refer the allegation to the to the Monitoring Officer to investigate<sup>11</sup> (Paragraph 2.7)
  - To refer the allegation to the Monitoring Officer to take steps other than investigation<sup>12</sup> (Paragraph 2.6)
  - To refer the matter to Standards for England (Paragraph 2.9)
  - To take no action in respect of the allegation

### **2.2 THE DECISION NOTICE**

- 2.2.1 As soon as possible after making a decision (normally within five working days), the Committee Clerk will produce a decision notice which gives notice of the Assessment

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<sup>9</sup> Regulation 8(5) Standards Committee (England) Regulations 2008.

<sup>10</sup> As required by Section 57A (2) of the Local Government Act 2000

<sup>11</sup> This can be Monitoring Officer of another authority if the Member is longer a member of LCC but of another authority

<sup>12</sup> This can be Monitoring Officer of another authority if the Member is longer a member of LCC but of another authority

## Standards Committee Procedure Rules

Sub-Committee's decision and sets out clearly the reasons for its decision<sup>13</sup>. All Members of the Assessment Sub-Committee will be provided with the opportunity to comment on the decision notice and the notice will be approved and signed by the Chair of the Assessment Sub-Committee<sup>14</sup>.

2.2.2 The decision notice must be sent to:

- the subject Member,
- the complainant, and
- any Parish Council concerned.

2.2.3 If the Assessment Sub-Committee decides that the complaint should be referred to the Monitoring Officer or to Standards for England then the decision notice shall state what the allegation was, what type of referral the Assessment Sub-Committee made, and why the particular referral decision has been made.<sup>15</sup>

2.2.4 Where no potential breach of the Members' Code of Conduct is disclosed the Assessment Sub-Committee will explain in the decision notice what the allegation was and why they believe this to be the case.

## 2.3 WITHHOLDING THE DECISION NOTICE

2.3.1 A copy of the decision notice will not be provided to the subject Member if the Assessment Sub-Committee determines that to do so would be contrary to the public interest or would prejudice the investigation of the complaint<sup>16</sup>.

2.3.2 In reaching a decision to withhold the decision notice from the subject Member the Assessment Sub-Committee must take account of any guidance issued by Standards for England and may take account of any advice given by the Monitoring Officer or any ESO concerned.<sup>17</sup>

2.3.3 If it is determined that the decision notice should not be given to the subject Member at the time the decision is made by the Assessment Sub-Committee, then reasonable steps must be taken to ensure that the decision notice is given to the subject Member either:

- when the Monitoring Officer or ESO has advised that it would no longer be contrary to the public interest or that it would no longer be prejudicial to any investigation; and in any event
- before consideration of any report or recommendation from a Monitoring Officer or an ESO in relation to that allegation.

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<sup>13</sup> This is a duty arising under S 57A (4) LGA 2000 in respect of the complainant, S 57(C) (3) in respect of the subject Member, and in Standards for England statutory guidance in relation to the Local Assessment of Complaints.

<sup>14</sup> An electronic signature is suitable for this purpose.

<sup>15</sup> SBE Guidance (Local Assessment of Complaints)

<sup>16</sup> Regulation 11 Standards Committee (England) Regulations 2008.

<sup>17</sup> Standards for England Guidance states that the Assessment Sub-Committee should take advice from the Monitoring Officer on such matters.

2.3.4 However this does not prevent the Monitoring Officer from notifying the subject Member that an allegation has been made, or the Assessment Sub-Committee from giving the subject Member some details of the allegation if they are of the opinion that disclosure of the details would not be contrary to the public interest and would not prejudice any investigation.<sup>18</sup>

## **2.4 THE NOTICE OF OUTCOME<sup>19</sup>**

2.4.1 The Committee Clerk will also produce a “notice of outcome” outlining the Assessment Sub-Committee’s consideration of the complaint<sup>20</sup>. This notice<sup>21</sup>:

- Must record the main points considered, the conclusion as regards the allegation, and the reasons for that conclusion,
- Must be prepared having regard to any Standards for England guidance,
- May give the name of the subject Member unless such disclosure is not in the public interest or would prejudice any investigation,
- Must be made available for inspection by the public at the Authority’s office for a period of six years after the date of the Sub-Committee meeting; and
- Must be given to any Parish Council concerned.

2.4.2 This notice of outcome does not need to be made available for inspection or given to any Parish Council until the subject Member has been given a copy of the decision notice (see paragraph 2.3 for details of when the decision notice may be withheld).

## **2.5 MINUTES OF THE ASSESSMENT SUB-COMMITTEE MEETING**

2.5.1 The Committee Clerk will produce brief minutes of the Assessment Sub-Committee’s consideration of the complaint. The information in these minutes will be limited to:

- The case reference number;
- The conclusion as regards the allegation; and
- the reasons for that conclusion (as long as this reasoning does not disclose any details of the complaint).

2.5.2 These minutes will be published on the Council’s website and will not record the name of the subject Member, the name of the complainant, or provide any details of the allegation.

## **2.6 THE REVIEW SUB-COMMITTEE**

2.6.1 The Review Sub-Committee is a closed meeting<sup>22</sup> and is not subject to the notice and publicity requirements under Part 5A of the Local Government Act 1972.

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<sup>18</sup> Regulation 11(4) Standards Committee (England) Regulations 2008.

<sup>19</sup> Required under Section 57C of the LGA 2000.

<sup>20</sup> Regulation 8 Standards Committee (England) Regulations 2008.

<sup>21</sup> In Leeds this is called the ‘Notice of Outcome’

<sup>22</sup> Regulation 8 Standards Committee (England) Regulations 2008.

## *Standards Committee Procedure Rules*

- 2.6.2 The Review Sub-Committee will review decisions made by the Assessment Sub-Committee not to take any action in respect of a complaint.
- 2.6.3 The request for a review must be made in writing within 30 days of the decision notice being issued.<sup>23</sup>
- 2.6.4 The Review Sub-Committee will take reasonable steps to give notice in writing to the subject Member of the request for the decision of the Assessment Sub-Committee to be reviewed.<sup>24</sup>
- 2.6.5 The review of the Assessment Sub-Committee decision will be carried out within three months of the request being received. Standards for England guidance recommends that such reviews are carried out within 20 days of receipt.
- 2.6.6 The Review Sub-Committee will apply the same assessment criteria as the Assessment Sub-Committee in making its decision (Appendix A to this procedure).
- 2.6.7 The Review Sub-Committee will decide whether:
- To refer the allegation to the Monitoring Officer to investigate.<sup>25</sup>
  - To refer the allegation to the Monitoring Officer to take steps other than investigation.<sup>26</sup>
  - To refer the matter to Standards for England.
  - To take no action in respect of the allegation.
- 2.6.8 If the Review Sub-Committee decide to take no action in respect of the allegation, the complainant has no further right of appeal to the authority against this decision. However they may refer the matter to the Local Government Ombudsman or seek a judicial review.
- 2.6.9 The requirements contained in paragraphs 2.2, 2.3, 2.4 and 2.5 above in respect of the Decision Notice, withholding the Decision Notice, the Notice of Outcome and Minutes of the Assessment Sub-Committee meeting apply in the same way to the deliberations and decision of the Review Sub-Committee<sup>27</sup>.

## **2.7 REFERRAL OF A COMPLAINT TO THE MONITORING OFFICER WITH A DIRECTION TO TAKE STEPS OTHER THAN AN INVESTIGATION<sup>28</sup>**

- 2.7.1 The Assessment or Review Sub-Committee can only refer the complaint to the Monitoring Officer with a direction to take steps other than carrying out an investigation after consultation with the Monitoring Officer.

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<sup>23</sup> These are not working days

<sup>24</sup> See S57C (4) LGA 2000

<sup>25</sup> This can be Monitoring Officer of another authority if the Member is longer a member of LCC but of another authority

<sup>26</sup> This can be Monitoring Officer of another authority if the Member is longer a member of LCC but of another authority

<sup>27</sup> See S57B (4) of the Local Government Act 2000

<sup>28</sup> Regulation 13 Standards Committee (England) Regulations 2008.

2.7.2 An ESO may also refer a matter to the Monitoring Officer with a direction to take steps other than carrying out an investigation<sup>29</sup>.

2.7.3 The steps that the Monitoring Officer can take are:

- Arranging for the subject Member to attend a training course;
- Arranging for the subject Member and the complainant to engage in a process of conciliation;
- Such other steps (not including an investigation) that the Assessment or Review Sub-Committee (or the ESO<sup>30</sup>) think are appropriate.

2.7.4 The Monitoring Officer will deal with the matter in accordance with the direction.

2.7.5 The Monitoring Officer will notify<sup>31</sup>:

- the subject Member,
- the complainant<sup>32</sup>, and
- any Parish Council concerned

that the complaint has been referred to them for such steps to be taken.

2.7.6 The Monitoring Officer will submit a written report<sup>33</sup> to the Assessment Sub-Committee (or ESO) within three months of the direction (or as soon as reasonable practicable after three months). That written report will give details of the action that has been taken or that it is proposed will be taken to comply with the direction of the Assessment or Review Sub-Committee. The Assessment Sub-Committee will consist of the same Members who originally assessed the complaint and referred it to the Monitoring Officer, wherever possible.

2.7.7 The Assessment Sub-Committee may give a further direction to the Monitoring Officer if it is not satisfied with the action specified in the written report.

2.7.8 The ESO<sup>34</sup> may follow the procedure contained in Regulation 13(8) of the Regulations if they are not satisfied with the action specified in the Monitoring Officer's report.

2.7.9 If the Assessment Sub-Committee is satisfied with the action specified in the written report it shall write to:

- the subject Member,
- the Complainant<sup>35</sup>, and
- any Parish Council concerned,

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<sup>29</sup> Under Section 60(2) or (3) of the Local Government Act 2000

<sup>30</sup> If the complaint was referred to the Monitoring Officer under Section 60 (2) or (3) of the LGA 2000

<sup>31</sup> Reg 13 Standards Committee (England) Regulations 2008

<sup>32</sup> And the standards committee of any other authority concerned

<sup>33</sup> Reg 13(6) Standards Committee (England) Regulations 2008

<sup>34</sup> If the complaint was referred to the Monitoring Officer under Section 60 (2) or (3) of the LGA 2000

<sup>35</sup> And the Standards Committee of any other authority concerned

to advise them that it is satisfied with the action that has been specified.

2.7.10 If the ESO is satisfied with the action specified in the Monitoring Officer's report then the ESO will send written notice of that fact to:

- the subject Member,
- the Complainant<sup>36</sup>, and
- any Parish Council concerned,

to advise them that they are satisfied with the action that has been specified.

## **2.8 REFERRAL OF A COMPLAINT TO THE MONITORING OFFICER FOR INVESTIGATION<sup>37</sup>**

2.8.1 When the Assessment or Review Sub-Committee (or ESO<sup>38</sup>) refers a complaint to the Monitoring Officer<sup>39</sup> for investigation, the Monitoring Officer shall inform<sup>40</sup>:

- the subject Member,
- the complainant<sup>41</sup>, and
- any Parish Council concerned,

that the matter has been referred to them for investigation and who will be conducting that investigation.

2.8.2 The Monitoring Officer will not inform the subject Member of the referral for investigation if the Assessment or Review Sub-Committee (or ESO) has directed them not to (in accordance with paragraph 2.3).

2.8.3 The Monitoring Officer will ensure that the investigation is carried out in accordance with the guidance issued by Standards for England and the Council's own procedure for external Code of Conduct investigations.

## **2.9 REFERENCES BACK TO ASSESSMENT SUB-COMMITTEE BY THE MONITORING OFFICER DURING AN INVESTIGATION OR OTHER ACTION<sup>42</sup>**

2.9.1 Where the Monitoring Officer has had a complaint referred to him/her by the Assessment or Review Sub-Committee to either investigate or take steps other than

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<sup>36</sup> And the Standards Committee of any other authority concerned

<sup>37</sup> Regulation 14 Standards Committee (England) Regulations 2008.

<sup>38</sup> Under section 60 (2) or (3) of the LGA 2000

<sup>39</sup> References to Monitoring Officer in respect of the Investigation of Code of Conduct Complaints also means the Monitoring Officers nominee. 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 as nominee.

<sup>40</sup> Reg 14 Standards Committee (England) Regulations 2008

<sup>41</sup> And the standards committee of any other authority concerned

<sup>42</sup> Regulation 16 Standards Committee (England) Regulations 2008.



an investigation, the Monitoring Officer may refer the matter back to the Assessment or Review Sub-Committee if the following circumstances apply:

- As a result of new information or evidence the Monitoring Officer is of the opinion that the complaint is materially more or less serious than may have seemed apparent to the Assessment or Review Sub-Committee, and
- The Monitoring Officer is of the opinion that the Assessment or Review Sub-Committee would have made a different decision had it been aware of that new information or evidence, OR
- That the person who is the subject of the complaint has died, is seriously ill, or has resigned from the Authority, and the Monitoring Officer is of the opinion that in the circumstances it is no longer appropriate to continue the investigation.

2.9.2 When a matter is referred back to the Assessment or Review Sub-Committee in this way it shall make a new initial assessment decision following the procedure set out in paragraph 2.1.

2.9.3 The Assessment or Review Sub-Committee can direct that a complaint should not be referred back to it a further time.

2.9.4 The Monitoring Officer can take the following into account when forming their opinion on the circumstances outlined in paragraph 2.9.1:

- The failure of any person to co-operate with an investigation; or
- Any allegation that the subject Member has engaged in a further breach of the Members Code of Conduct, or a related breach of the Code of Conduct of another relevant authority.

## **2.10 REFERRAL OF A COMPLAINT TO STANDARDS FOR ENGLAND BY THE ASSESSMENT OR REVIEW SUB-COMMITTEE**

2.10.1 When the Assessment or Review Sub-Committee refers a complaint to Standards for England for investigation, Standards for England will either<sup>43</sup> :

- Refer the complaint to an ESO for investigation;
- Decide that no action should be taken in respect of the complaint, or
- Refer the complaint back to the Assessment or Review Sub-Committee for re-assessment.

2.10.2 Standards for England will usually inform the Monitoring Officer within ten working days if they will accept a complaint or will be referring it back to the Assessment or Review Sub-Committee. Standards for England will give their reasons for doing so.

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<sup>43</sup> S.58 Local Government Act 2000

*Standards Committee Procedure Rules*

2.10.3 When a case is referred back to the Assessment or Review Sub-Committee by Standards for England an initial assessment decision will be made again in accordance with paragraph 2.1 above within an average of 20 days. Standards for England may give guidance, or give a direction to the Assessment or Review Sub-Committee when a case is referred back to them in this way.

2.10.4 The Assessment Sub-Committee will then make one of the following decisions:

- To refer the allegation to the Monitoring Officer to investigate,
- To refer the allegation to the Monitoring Officer to take steps other than an investigation, or
- To take no action in respect of the allegation.

2.10.5 The Assessment Sub-Committee does not have the option of referring the matter back to Standards for England for a second time.

### **3.0 RECEIPT AND CONSIDERATION OF FINAL INVESTIGATION REPORTS**

#### **3.1 PROCEDURE FOR THE ASSESSMENT SUB-COMMITTEE MEETING**

- 3.1.1 When considering a Final Report referred to it by the Monitoring Officer<sup>44</sup>, the Assessment Sub-Committee will only consider the information contained in the Final Report, and will not interview witnesses, or take representations from the parties. However the Assessment Sub-Committee may invite the investigator to the meeting in order to present their findings and answer any questions regarding their final report.
- 3.1.2 The Assessment Sub-Committee may also make recommendations to the relevant authority on matters arising from the Final Report.
- 3.1.3 When the Assessment Sub-Committee meets to consider a final report these meetings are normal meetings and the normal rules relating to notice and publicity apply. The Assessment Sub-Committee shall therefore consider whether to exclude the public from any part of the meeting and which parts of the agenda are not to be made available for public inspection<sup>45</sup>.

#### **3.2 COMPLAINTS INVESTIGATED BY OR ON BEHALF OF THE MONITORING OFFICER**

- 3.2.1 The Assessment Sub-Committee will consider all Final Reports that have been investigated by the Monitoring Officer or their nominee.
- 3.2.2 The Assessment Sub-Committee will convene to consider the Final Report and decide:
- a) If the report contains a finding of no failure whether:
    - It accepts the Monitoring Officer/Investigators finding of no failure (a “finding of acceptance”); or
    - The matter should be referred for a hearing; and
  - b) If the matter is to be referred for a hearing whether:
    - The matter should be referred to the Hearings Sub-Committee for determination; or
    - The matter should be referred to the Adjudication Panel for England for determination.
- 3.2.3 As soon as reasonably practicable after making a “finding of acceptance”, the Assessment Sub-Committee shall give written notice of the finding to:
- the subject Member;
  - any ESO concerned<sup>46</sup>;
  - the Investigator;
  - any Parish Council concerned<sup>47</sup>; and

<sup>44</sup> In accordance with Regulations 14, 15 and 17 Standards Committee (England) Regulations 2008.

<sup>45</sup> Regulation 8(6) Standards Committee (England) Regulations 2008. This consideration should take into account the guidance from Standards for England in their document “Standards Committee Determinations”.

<sup>46</sup> Code of Conduct Complaint only when an ESO has been involved

<sup>47</sup> Code of Conduct Complaint only

- the complainant<sup>48</sup>

3.2.4 After making a “finding of acceptance” the Assessment Sub-Committee shall also, as soon as reasonably practicable, arrange for a notice to be published stating that the Assessment Sub-Committee have found that there has not been a failure on the part of the subject Member to comply with the Code of Conduct. This notice shall not be published if the subject Member requests that it is not published.

3.2.5 This notice must be published in at least one newspaper circulating in the area of any authority concerned, and, if considered appropriate by the Assessment Sub-Committee, on the website of any authority concerned and in any other publication.

3.2.6 The Assessment Sub-Committee may only decide to refer the matter to the Adjudication Panel for determination if:

- it has determined that the action it could take against the subject Member would be insufficient were a finding of failure to be made; and
- the president or deputy president of the Adjudication Panel has agreed to accept the referral.

### **3.3 COMPLAINTS INVESTIGATED BY AN ETHICAL STANDARDS OFFICER (ESO)**

3.3.1 When a matter is referred to the ESO for investigation the ESO will make one of the following findings in relation to their investigation:

- That there has been no failure to comply with the code of conduct of the relevant authority concerned<sup>49</sup>;
- That there has been such a failure to comply but no action needs to be taken<sup>50</sup>;
- That the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned<sup>51</sup>; or
- That the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for England for adjudication by a case tribunal<sup>52</sup>.

3.3.2 Where the ESO makes a finding that the matters should be referred to the Monitoring Officer, the ESO will produce a report on the outcome of the investigation and send this report to the Monitoring Officer and the Standards Committee of the relevant authority.

3.3.3 The Monitoring Officer will send a copy of the ESO’s report to the subject Member. After the subject Member has received the report, the Monitoring Officer will refer this report to the Assessment Sub-Committee for it to decide whether:

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<sup>48</sup> 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.

<sup>49</sup> In accordance with Section 59(4)(a) of the Local Government Act 2000.

<sup>50</sup> In accordance with Section 59(4)(b) of the Local Government Act 2000.

<sup>51</sup> In accordance with Section 59(4)(c) of the Local Government Act 2000.

<sup>52</sup> In accordance with Section 59(4)(d) of the Local Government Act 2000.

- The matter should be referred to the Hearings Sub-Committee for determination; or
- The matter should be referred to the Adjudication Panel for England for determination.<sup>53</sup>

3.3.4 The Assessment Sub-Committee may only decide to refer the matter to the Adjudication Panel for determination if:

- it has determined that the action it could take against the subject Member would be insufficient were a finding of failure to be made; and
- the president or deputy president of the Adjudication Panel has agreed to accept the referral.

3.3.5 Where the ESO makes a finding that there has been no failure to comply with the code of conduct, or where there has been such a failure but no action needs to be taken, the ESO:

- May produce a report on the outcome of their investigation (where the ESO does not produce any such report, he must inform the Monitoring Officer of the outcome of the investigation);
- Must send a copy of any such report to the Monitoring Officer; and
- May provide a summary of any such report to any newspapers circulating in the area of the relevant authority.

3.3.6 Such a report would not be considered by the Assessment Sub-Committee, but may be referred to a meeting of the full Standards Committee by the ESO if he believes it will assist the Committee in the discharge of its functions as prescribed in Part III of the Local Government Act 2000.<sup>54</sup>

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<sup>53</sup> In accordance with Regulations 15 and 17 Standards Committee (England) Regulations 2008.

<sup>54</sup> Section 3A of the Local Government Act 2000.

## **4.0 HEARINGS SUB-COMMITTEE PROCEDURE**

### **4.1 PURPOSE OF THE PRE-HEARING PROCESS**

4.1.1 The pre-hearing process will only deal with procedural issues. It will normally be dealt with by the Monitoring Officer, in consultation with the Chair of the Hearings Sub-Committee, and carried out in writing, although the Chair has discretion to convene a pre-hearing meeting of the Hearings Sub-Committee, which may be attended by the Parties, where the Chair considers this is necessary.

4.1.2 The purpose of the pre-hearing process is to:

- identify whether the subject Member disagrees with any of the findings of fact in the investigation report;
- decide whether or not those disagreements are likely to be relevant to any matter the hearing needs to decide;
- decide whether to hear evidence about those disagreements during the hearing;
- decide whether there are any parts of the hearing that should be held in private; and
- decide whether or not any parts of the investigation report or other documents should be withheld from the public prior to the hearing on the grounds that they contain 'exempt' material.

### **4.2 STARTING THE PRE-HEARING PROCESS**

4.2.1 The Committee Clerk will commence the pre-hearing process once the Assessment Sub-Committee has made a decision to refer a complaint to the Hearings Sub-Committee for a hearing.

4.2.2 The Committee Clerk will contact the Chair of the Standards Committee following the decision of the Assessment Sub-Committee to establish who will act as the Chair to the Hearings Sub-Committee. This will normally be the Chair of the Standards Committee<sup>55</sup>, unless he or she is prevented from taking part for some reason, in which case it will be the Chair's nominee, chosen from one of the other Independent Members appointed to the Standards Committee.

4.2.3 After consultation with the Chair of the Hearings Sub-Committee and within 3 days of the decision of the Assessment Sub-Committee the Committee Clerk will:-

- propose a date for the hearing (this must be within 3 months of the date on which the Investigator completed the report or from the date the Monitoring Officer received the report from the ESO, and at least 14 days<sup>56</sup> after the date on which the Monitoring Officer sent the subject Member a copy of the report, unless the subject Member agrees to an earlier date);

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<sup>55</sup> As stated in Article 9 of the Constitution.

<sup>56</sup> These are not working days.

- provide a copy of this Hearings Sub-Committee Procedure to the subject Member;
- send the subject Member an outline of their rights during the hearings process (Appendix C to the Standards Committee Procedure Rules); and
- invite the subject Member to respond in writing by a set time<sup>57</sup> to the questions set out in the Member's Information Form, in order to find out whether the subject Member:
  - wants to be represented at the hearing by a solicitor, barrister or any other person;
  - disagrees with any of the findings of fact in the report, including the reasons for any disagreements;
  - wants to give evidence to the Hearings Sub-Committee, either verbally or in writing;
  - wants to call relevant witnesses to give evidence to the Hearings Sub-Committee (if so, the subject Member should provide outlines or statements of the evidence that their witnesses intend to give);
  - wishes to make representations about any sanctions to be imposed if the Hearings Sub-Committee decide that they have breached the Code of Conduct;
  - can come to the hearing on the proposed date<sup>58</sup>;
  - wants any part of the hearing to be held in private; and
  - wants any part of the investigation report or other relevant documents to be withheld from the public.

4.2.4 If the subject Member does not respond within the time set the Committee Clerk will send the subject Member a reminder giving a further 5 working days in which to respond.

4.2.5 If the subject Member fails to respond following the reminder it will be assumed that the subject Member:

- agrees with the findings of fact in the report;
- does not wish to make representations about any sanctions to be imposed if the Hearings Sub-Committee decide that the subject Member has breached the Code of Conduct;
- does not want to be represented at the hearing by a solicitor, barrister or any other person;
- does not want to give evidence to the Hearings Sub-Committee, either verbally or in writing;
- is content for the hearing to be fixed on any of the proposed dates whether or not the subject Member can attend;
- does not want any part of the hearing to be held in private; and
- does not want any part of the report or other relevant documents to be withheld from the public.

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<sup>57</sup> 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 working days.

<sup>58</sup> Where ever possible, given the availability of Members of the Standards Committee and the availability of suitable accommodation the Member will be given a choice of dates. These dates will be proposed by the Chair in consultation with the Committee Clerk.

## *Standards Committee Procedure Rules*

- 4.2.6 Within 3 days of receiving the subject Member's response the Committee Clerk will send the subject Member's response to the Investigator for comment, and will request that the Investigator responds to the questions set out in the Investigator's Information Form within a set time<sup>59</sup>. These questions relate to whether the Investigator:
- wants to be represented at the hearing;
  - wants to call relevant witnesses to give evidence to the Hearings Sub-Committee (If so, the Investigator should provide outlines or statements of the evidence their witnesses intend to give);
  - wants any part of the hearing to be held in private; and
  - wants any part of the investigation report or other relevant documents to be withheld from the public.
- 4.2.7 After the set time periods have expired (or after the Committee Clerk has received responses from both Parties if this is earlier), the Monitoring Officer will review the information received, and, after consultation with the Chair of the Hearings Sub-Committee, will set the date, time and place of the hearing.
- 4.2.8 In consultation with the Chair of the Hearings Sub-Committee the Monitoring Officer may also decide any issues which will help the Hearings Sub-Committee to determine the complaint. Such matters include:
- Identifying whether the subject Member disagrees with any of the findings of fact in the investigation report;
  - Identifying whether those disagreements are likely to be relevant to any matter the hearing needs to decide;
  - Identifying whether evidence about those disagreements will need to be heard during the hearing;
  - Deciding whether there are any parts of the hearing that are likely to be held in private; and
  - Deciding whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' information.
- 4.2.9 In accordance with the decision of the Standards Committee<sup>60</sup>, where issues arise during the pre-hearing process which relate to decisions which are reserved to the Hearings Sub-Committee<sup>61</sup>, the Monitoring Officer will, in consultation with the Chair of the Hearings Sub-Committee, make preliminary decisions<sup>62</sup> on those matters, as follows:-
- whether the Hearings Sub-Committee consents to the subject Member being represented by a non-legally qualified representative;

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<sup>59</sup> 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.

<sup>60</sup> Minute 12 of the Standards Committee meeting held on 8<sup>th</sup> July 2009.

<sup>61</sup> As set out in Regulation 18(1) to (6) Standards Committee (England) Regulations 2008.

<sup>62</sup> These preliminary decisions will be presented to the Hearings Sub-Committee as recommendations at the commencement of the hearing for the Sub-Committee to make a formal decision. According to Article 12 of the Constitution the Monitoring Officer has a responsibility to provide support to the Standards Committee and its Sub-Committees.



- whether witnesses will be heard at the hearing;
- whether the Hearings Sub-Committee wishes to call any witnesses to attend who may help the Hearings Sub-Committee to determine the complaint;<sup>63</sup>
- whether the Hearings Sub-Committee is likely to refuse to hear evidence from any of the witnesses notified by either Party, and the reasons for this;<sup>64</sup>
- whether to send 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.

4.2.10 The subject Member will be advised of the Monitoring Officer's preliminary decision and the reasons for it prior to the meeting of the Hearings Sub-Committee.

4.2.11 The Hearings Sub-Committee will then be invited to formally consider these preliminary decisions at the beginning of the Hearing itself. The Hearings Sub-Committee is entitled to reject the Monitoring Officer's preliminary decision if they see fit.

4.2.12 Alternatively the Chair of the Hearings Sub-Committee has the discretion to convene a pre-hearing meeting of the Hearings Sub-Committee to decide such matters, which may be attended by the Parties, where the Chair considers this is necessary.

### **4.3 THE PRE-HEARING PROCESS SUMMARY**

4.3.1 The Monitoring Officer, in consultation with the Chair of the Hearings Sub-Committee will then prepare a pre-hearing process summary. The summary will contain the following information:

- The name of the relevant authority;
- The name of the subject Member;
- The name of the complainant (unless this has been withheld for whatever reason);
- The case reference numbers;
- The name of the Chair of the Hearings Sub-Committee;
- The name of the Monitoring Officer;
- The name of the investigator;
- The name of the Committee Clerk;
- The date the pre-hearing process was produced;
- The date, time and place of the hearing;
- A summary of the complaint;
- The relevant sections of the Code of Conduct;
- 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 subject Member or the Investigator will attend or be represented;

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<sup>63</sup> This may include the Complainant. The Committee cannot however order witnesses to appear or give evidence.

<sup>64</sup> 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.

## *Standards Committee Procedure Rules*

- The names of any witnesses who will be asked to give evidence (subject to the power of the Hearings Sub-Committee to make a ruling at the hearing); and
- An outline of the proposed procedure for the hearing.

4.3.2 The summary will be sent to everyone involved in the hearing (including the Parties, and the Members of the Hearings Sub-Committee) at least 10 days before the proposed date of the hearing.

### **GENERAL POINTS REGARDING THE HEARING SUB-COMMITTEE MEETING**

#### **4.4 FAILURE TO ATTEND THE HEARING**

4.4.1 If either Party fails to attend a hearing, the Committee will consider whether there is sufficient reason for the failure.

4.4.2 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. The Committee shall consider any representations submitted by the Party in writing before making any determination in the Party's absence.

4.4.3 If the Committee does consider there is sufficient reason, it will adjourn the hearing to another date.<sup>65</sup>

#### **4.5 RECORDING THE HEARING**

4.5.1 It will be normal practice for hearings by the Hearings Sub-Committee to be taped as a matter of course, and the agenda for the hearing will indicate that the proceedings may be taped. It will be the duty of the Chair to inform all parties involved at the start of the hearing that the hearing is being tape recorded.

4.5.2 Access to the tapes will be controlled by the Monitoring Officer<sup>66</sup>. Tapes will be kept by the Monitoring Officer for 2 months from the date of the hearing and will then be erased, except in the event of an appeal in which case the tapes will be retained until the final outcome of the case is known.

#### **4.6 LEGAL REPRESENTATION AND ADVICE**

4.6.1 The subject Member may be represented or accompanied during the meeting by a solicitor, counsel, or, with the permission of the Hearings Sub-Committee, another person.

4.6.2 The Monitoring Officer will usually act as the legal advisor to the Hearings Sub-Committee for the hearing. The Hearings Sub-Committee may take legal advice, in

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<sup>65</sup> This is subject to the Committee complying with the requirement that the hearing takes place within three months of the date when the Investigator issued the final report or when the Monitoring Officer received the report from the ESO.

<sup>66</sup> Access will be provided where required in accordance with the Data Protection Act 1998, or where necessary in relation to an appeal to the Adjudication Panel.

private if necessary, from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Sub-Committee should be shared with the Parties attending the hearing.

#### **4.7 ADJOURNING THE HEARING**

- 4.7.1 The Hearings Sub-Committee will aim to complete a hearing in one sitting or in consecutive sittings.
- 4.7.2 The Hearings Sub-Committee may at any stage prior to the conclusion of the hearing adjourn the hearing<sup>67</sup> and require the Investigator to seek further information or undertake further investigation<sup>68</sup> on any specified point. The Hearings Sub-Committee may not adjourn the hearing on more than one occasion under this paragraph.
- 4.7.3 The Hearings Sub-Committee may at any stage prior to the conclusion of the hearing into a final report issued by an ESO, 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.<sup>69</sup>
- 4.7.4 The Hearings Sub-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.

#### **STAGES OF THE HEARING**

#### **4.8 STAGE 1: SETTING THE SCENE**

- 4.8.1 The Hearings Sub-Committee and its advisors will assemble in the hearing room<sup>70</sup>. At the start of the Hearing all parties present will be invited to enter the hearing room. The Chair will ensure that the Parties are formally introduced.
- 4.8.2 The Hearings Sub-Committee will consider whether to exclude the public from any parts of the hearing and which parts of the agenda are not to be made available for public inspection<sup>71</sup>. When doing so the Hearings Sub-Committee will have regard to the guidance from Standards for England on "Standards Committee Determinations".
- 4.8.3 The Hearings Sub-Committee will keep this issue under review throughout the hearing.

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<sup>67</sup> This is subject to the Committee complying with the requirement that the hearing takes place within three months of the date when the Investigator issued the final report or when the Monitoring Officer received the report from the ESO.

<sup>68</sup> Regulation 18(8) Standards Committee (England) Regulations 2008.

<sup>69</sup> Regulation 18(10) Standards Committee (England) Regulations 2008.

<sup>70</sup> At no time before, during or after the hearing, should either party be present or represented before the Committee without the other party being also present or represented, unless the other party has failed to attend and the Committee is discussing whether to proceed in his/her absence or has decided to proceed in his/her absence.

<sup>71</sup> In accordance with Regulation 8(6) Standards Committee (England) Regulations 2008. 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.

4.8.4 The Chair will explain how the Hearings Sub-Committee will run the hearing.

#### **4.9 STAGE 2: PRELIMINARY PROCEDURAL ISSUES**

4.9.1 The Hearings Sub-Committee will 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. This may include any preliminary decisions made by the Monitoring Officer in consultation with the Chair of the Hearings Sub-Committee.

4.9.2 The Hearings Sub-Committee will decide these issues or disagreements.

#### **4.10 STAGE 3: MAKING FINDINGS OF FACT**

4.10.1 After dealing with any preliminary issues, the Hearings Sub-Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigator's Final Report.

4.10.2 If there is no significant disagreement about the facts, the Hearings Sub-Committee will move on to Stage 4 of the hearing.

##### **IF THERE IS DISAGREEMENT OVER THE FINDINGS OF FACT**

4.10.3 If there is a disagreement, the Hearings Sub-Committee will invite the Investigator to make any necessary representations to support the relevant findings of fact in the Final Report.

4.10.4 The Investigator may, with the agreement of the Hearings Sub-Committee, call any necessary supporting witnesses to give evidence.

4.10.5 The Hearings Sub-Committee may give the subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

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

4.10.7 The Hearings Sub-Committee may question any of the people involved or any witnesses and allow the Investigator to challenge any evidence put forward by witnesses called by the subject Member.

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

4.10.9 If the subject Member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the Sub-

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Committee will consider whether it would be in the public interest to continue in their absence.

- 4.10.10 After considering the subject Member's explanation for not raising the issue at an earlier stage, the Sub-Committee may then:
- Continue with the hearing, relying of the information in the investigator's report;
  - Allow the subject Member to make representations about the issue, and invite 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 investigator to be present if they are not already.

4.10.11 The Sub-Committee will usually move to another room to consider the representation and evidence in private. The Hearings Sub-Committee will make findings in relation to the facts.

4.10.12 On their return to the hearing room, the Chair will announce the Sub-Committee's findings of fact.

#### **4.11 STAGE 4: DID THE SUBJECT MEMBER FAIL TO FOLLOW THE CODE OF CONDUCT?**

4.11.1 The Hearings Sub-Committee shall consider whether or not, based on the facts it has found, the subject Member has failed to follow the Code.

4.11.2 The subject Member will be invited to give relevant reasons why the Sub-Committee should decide they have not failed to follow the Code.

4.11.3 The Sub-Committee will then consider any verbal or written representations from the investigator.

4.11.4 The Sub-Committee may, at any time, questions anyone involved on any point they raise on their representations.

4.11.5 The subject Member will be invited to make any final relevant points.

4.11.6 The Hearings Sub-Committee will then move to another room to consider the representations and decide whether or not the subject Member has failed to follow the Code.

4.11.7 Once a conclusion has been reached, the Chair will announce the Hearings Sub-Committee's decision as to whether or not the subject Member has failed to follow the Code.

4.11.8 Where the Hearings Sub-Committee decides that the subject Member has not failed to follow the Code, the Sub-Committee can move on to decide whether it should make any recommendations to the authority in accordance with Stage 6 of this procedure.

## **4.12 STAGE 5: DECISION TO APPLY A SANCTION**

4.12.1 If the Sub-Committee decides that the subject Member has failed to follow the Code, it will consider any verbal or written representations from the Investigator and the subject Member about:-

- whether or not the Committee should impose any sanction;
- what form any sanction should take.

4.12.2 The Hearings Sub-Committee may question the investigator and subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision. The Hearings Sub-Committee will also have regard to any advice issued by the Adjudication Panel for England and Standards for England within their guidance on “Standards Committee Determinations”.

4.12.3 The Hearings Sub-Committee will then deliberate in private to consider whether to impose a sanction in the subject Member and, if so, what the sanction should be. The Hearings Sub-Committee can impose any one or a combination of the following:

- Censure of the subject Member.
- Restriction for a period not exceeding six months of the subject Member’s access to the premises of the authority or the subject Member’s use of the Council’s resources, provided that:
  - those restrictions are reasonable and proportionate to the nature of the breach; and
  - they do not unduly restrict the subject Member’s ability to perform the functions of a Councillor.
- Partial suspension of the subject Member for a period not exceeding six months.
- Suspension of the subject Member for a period not exceeding six months.
- That the subject Member to submit a written apology in a form specified by the Hearings Sub-Committee.
- That the subject Member to undertake such training as the Hearings Sub-Committee specifies.
- That the subject Member participates in such conciliation as the Hearings Sub-Committee specifies.
- Partial suspension of the subject Member for a period not exceeding six months or until such time as the subject Member has met either of the following restrictions:
  - They have submitted a written apology in the form specified by the Hearings Sub-Committee.
  - They have undertaken such training or have participated in such conciliation as the Hearings Sub-Committee specifies.
- Suspension of the subject Member for a period not exceeding six months or until such time as the subject Member has met either of the following restrictions:
  - They have submitted a written apology in the form specified by the Hearings Sub-Committee.
  - They have undertaken such training or have participated in such conciliation as the Hearings Sub-Committee specifies.

4.12.4 Suspension or partial suspension<sup>72</sup> will normally start immediately after the Hearings Sub-Committee has made its decision. However if the Hearings Sub-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 subject Member, for example, in the case of a suspension where there are no authority meetings which the subject Member would normally attend during this period. The Hearings Sub-Committee would also confirm the consequences, if any, for any allowances the subject Member may be receiving.

4.12.5 The Hearings Sub-Committee will retire to consider whether to impose a sanction, and 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.<sup>73</sup>

4.12.6 The Chair will announce the Hearings Sub-Committee's decision.

#### **4.13 STAGE 6: RECOMMENDATIONS TO THE AUTHORITY**

4.13.1 The Hearings Sub-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.

#### **4.14 STAGE 7: MAKING THE FINDINGS PUBLIC AT THE HEARING**

4.14.1 The Chair will verbally confirm the Hearings Sub-Committee's decision, with reasons, in public at the end of the hearing. Where practicable a written summary of the decision will be provided on that day<sup>74</sup>.

4.14.2 The Committee Clerk will where possible prepare the full written hearing decision in draft on the day of the hearing.

#### **4.15 THE HEARING DECISION**

4.15.1 The Hearings Sub-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 subject Member;
- the ESO (if relevant);
- the Investigator
- the Standards Committee;
- the Standards Committee of any other authority concerned<sup>75</sup>;
- any Parish Council concerned; and

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<sup>72</sup> Periods of suspension or partial suspension set by a standards committee do not count towards the six month limit for absences from local authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 2000.

<sup>73</sup> The Standards Committee Media Protocol will be followed in relation to any dealings with the media about the Complaint.

<sup>74</sup> If it is not practicable to provide a short written decision on the day of the hearing then it will be provided within 3 days of the hearing.

<sup>75</sup> where at the time of the complaint, the Member was a member of another authority

## *Standards Committee Procedure Rules*

- the Complainant.

4.15.2 The Hearing decision shall contain the following information and will be written having regard to the guidance in “Standards Committee Determinations” issued by Standards for England:

- a summary of the Complaint;
- the relevant section or sections of the Code of Conduct;
- a summary of the evidence considered and representations made;
- the findings of fact, including the reasons for them;
- the finding as to whether or not the Member failed to follow the Code of Conduct, including the reasons for that finding;
- the sanctions imposed, if any, including the reasons for any penalties; and
- the right of appeal, including details of the postal and website address for the Adjudication Panel. The appeal form produced by the Adjudication Panel (which can be downloaded from the website) will be attached to the decision.

4.15.3 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 Authority<sup>76</sup> and if considered appropriate by the Committee on the website of any authority concerned or in any other publication, except where the Committee has found that the subject Member had not failed to comply with the Code of Conduct, and the subject Member asks for the summary not to be published.

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<sup>76</sup> In accordance with Regulation 20 of the Standards Committee (England) Regulations  
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15 October 2009



## 5.0 **LOCAL COMPLAINTS**

### 5.1 **INTERPRETATION**

“Authority” means Leeds City Council;

“Chair” means the Chair of the Committee<sup>77</sup> who must be an Independent Member of the Committee;

“Committee” means the Standards Committee or the relevant Sub-Committee with power to discharge the function referred to;

“Complainant” means the person who made the complaint;

“day” means a clear working day unless otherwise indicated;

“Investigator” means the Monitoring Officer or their nominee;

“Legal Advisor” means the person providing legal advice to the Committee;<sup>78</sup>

“subject Member” means the Member or co-opted member<sup>79</sup> 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 subject Member or the Investigator but does not include the Complainant;

“Local code / protocol” means any of the Authority’s Codes of Protocols (contained in Part 5 of the Constitution) which refer to the conduct of Members (other than the Members’ Code of Conduct) and the National Code of Local Government Conduct where the alleged breach is committed before 5 April 2002; and

“Local complaint” means a complaint that a subject Member has breached a Local Code or Protocol.

### 5.2 **RECEIPT OF LOCAL COMPLAINTS**

5.2.1 A Local Complaint must be made in writing to the Monitoring Officer. The Monitoring Officer will acknowledge receipt of a Local Complaint to the Complainant within 5 days.

5.2.2 The Monitoring Officer will notify the subject Member within 5 days of receiving the Complaint<sup>80</sup>:

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<sup>77</sup> Or other Member elected by the Committee in the absence of the Chair.

<sup>78</sup> 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.

<sup>79</sup> As defined in Section 47 Local Government Act 2000. It also includes a former member or co-opted member.

<sup>80</sup> 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.

## *Standards Committee Procedure Rules*

- that s/he has received the complaint;
- who the complainant is;<sup>81</sup>
- what the complaint is about, including which Local Code it is alleged that the subject Member has breached; and
- the procedure which will be followed in respect of the complaint.

### **5.3 PRELIMINARY INVESTIGATION OF LOCAL COMPLAINTS**

5.3.1 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.

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

5.3.3 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
- has already been investigated.

5.3.4 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 subject Member of that decision; and
- where the decision is not to take further action, provide reasons for this decision.

5.3.5 The Monitoring Officer will also

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

### **5.4 FULL INVESTIGATION OF LOCAL COMPLAINTS**

5.4.1 The Investigator will give the subject Member the opportunity to comment on the Local Complaint.

5.4.2 When conducting an investigation the Investigator may:

- Make inquiries of any person the Investigator thinks is necessary or useful in conducting the investigation;
- Require any person to give such information or explanation as the Investigator thinks is necessary or useful in conducting the investigation;
- Require any of the authorities concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation;
- Require any of the authorities concerned to meet the reasonable cost of any such advice and assistance provided;

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<sup>81</sup> In accordance with the Authority's Whistleblowing policy, the identity of the Complainant may be protected in some cases.

- Require the responsible authority to meet any reasonable costs incurred by a Parish Council in providing such advice and assistance; and
- Require any of the authorities concerned to allow reasonable access to documents in the possession of that authority that the Investigator thinks are necessary for the purpose of conducting the investigation.

5.4.3 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.

5.4.4 The Investigator will make clear to any person interviewed that any information which that person provides may be shared with the Standards Committee and may be made public. Any person interviewed will be entitled to be accompanied by a representative of their choice.<sup>82</sup>

## 5.5 ISSUING THE DRAFT REPORT

5.5.1 When the Investigator has concluded the investigation, the Investigator will consider whether to issue a draft report before the final report.

5.5.2 Where the Investigator decides to issue a draft report, s/he will issue this to the subject Member, and may issue it to 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.

5.5.4 The Investigator will mark the draft report “confidential” and “draft”.

5.5.5 The subject Member, and where relevant the Complainant, may make representations about the draft report in whatever manner is most convenient to him/her.

5.5.6 The Investigator will take whatever action s/he considers to be appropriate in view of any representations received.

## 5.6 ISSUING THE FINAL REPORT

5.6.1 When the Investigator has completed the investigation they will

- make a finding that:
  - there has been a failure to comply with the Local Code/Protocol (“a finding of failure”); or
  - there has not been a failure to comply with the Local Code/Protocol (“a finding of no failure”);
- prepare a written report of the investigation (“the Final Report”) which contains their findings.

5.6.2 The Final Report will contain:-

- a “final” marking;
- the date;

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<sup>82</sup> In accordance with the Authority’s Whistle blowing Policy, the identity of the Complainant may be protected in some cases in respect of a Local Complaint.

## *Standards Committee Procedure Rules*

- the relevant sections of the Local Code or Protocol;
- 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 Protocol - a "finding of failure"; or
  - there has not been a failure to comply with the Local Code or Protocol – a "finding of no failure"; and
- documents relied on by the Investigator in reaching his or her conclusions.

5.6.3 The Final Report should also state that it represents the Investigator's final findings and will be presented to the Assessment Sub-Committee for consideration.

5.6.4 The Investigator will send a copy of their Final Report to:

- the Member;
- the Complainant; and
- the Monitoring Officer.<sup>83</sup>

5.6.5 The Final Report will be accompanied by information explaining the circumstances under which:

- the Assessment Sub-Committee will consider the final report (where the report contains a finding of no failure); and/or
- the procedure the Hearings Sub-Committee will follow to conduct a hearing into the allegations (as set out in Section 4 of this procedure).

5.6.6 The Monitoring Officer will within 2 days of completing or receiving the Final Report:

- Ask the Committee Clerk to make arrangements for:
  - The pre-hearing process to commence where the report contains a finding of failure, OR
  - The Assessment Sub-Committee to consider the Final Report at a meeting of the Assessment Sub-Committee 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.

## **5.7 CONSIDERATION OF FINAL REPORTS BY THE ASSESSMENT SUB-COMMITTEE**

5.7.1 Where the Final Report contains a finding of no failure the Assessment Sub-Committee will convene to consider the Final Report and decide whether:

- It accepts the Investigators finding of no failure (a "finding of acceptance"), or
- The matter should be referred to the Hearings Sub-Committee for a hearing.

5.7.2 As soon as reasonably practicable after making a finding of acceptance, the Assessment Sub-Committee shall give written notice of the finding to

- the subject Member;

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<sup>83</sup> Where the Monitoring Officer has not acted as Investigator.

- the Investigator; and
- the Complainant.

- 5.7.3 After making a finding of acceptance the Assessment Sub-Committee shall also, as soon as reasonably practicable, arrange for a notice to be published stating that the Assessment Sub-Committee have found that there has not been a failure on the part of the subject Member to comply with the Local Code/Protocol. This notice shall not be published if the subject Member requests that it should not be.
- 5.7.4 When considering any Final Report the Assessment Sub-Committee will only consider the information in Final Report; it will not interview witnesses, nor take representations from the parties.
- 5.7.5 The Assessment Sub-Committee may make recommendations to the Authority on matters arising from the Final Report.
- 5.7.6 When the Assessment Sub-Committee meets to consider an Investigator's Final Report, these meetings are normal meetings and the normal rules relating to notice and publicity apply. The Assessment Sub-Committee shall therefore consider whether to exclude the public from any part of the meeting and which parts of the agenda are not to be made available for public inspection.

## **5.8 HEARINGS INTO POTENTIAL BREACHES OF A LOCAL CODE OR PROTOCOL**

- 5.8.1 The procedure for the pre-hearing process and Hearings Sub-Committee meeting will be the same as that for Complaints about potential breaches of the Code of Conduct (as set out in Section 4 of this procedure), with the exception of the following matters:
- 5.8.1.1 When applying a sanction to the subject Member in relation to a breach of a Local Code or Protocol (in accordance with paragraph 4.12.3 of this procedure) the Hearings Sub-Committee is only able to apply one, or a combination, of the following sanctions:
- 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.
- 5.8.1.2 When dealing with a Local Complaint the Hearings Sub-Committee need only give a copy of its Hearing Decision (in accordance with paragraph 4.15.1 of this procedure) to:
- the subject Member;
  - the Investigator;
  - the Standards Committee; and
  - the Complainant.

**ASSESSMENT CRITERIA**

The criteria that will be used by the Assessment and Review Sub-Committees to assess the complaint made against the subject Member and decide whether it should be investigated are set out below:

- Complaints made anonymously will only be referred for investigation or other action if they are exceptionally serious or significant.
- If the information provided in the complaint is insufficient to make a decision as to whether the complaint should be referred for investigation, the Sub-Committee will take no further action on the complaint, unless or until further information is provided.
- If an alternative to investigation would provide an effective resolution to the matter, the Sub-Committee may refer the complaint to the Monitoring Officer to take alternative action. However if the alternative action is not successful, the case will no longer be open to investigation.
- Complaints which are considered trivial or not sufficiently serious may not be referred for further action.
- If a long period of time has passed since the alleged conduct occurred, it may be considered of little benefit to take any further action in relation to the complaint.
- If the complaint appears to be malicious, politically motivated or tit-for-tat, the Sub-Committee may decide that further action is not warranted.
- If the matter complained of has already been subject to previous investigation or other action, or has been subject to investigation by another regulatory authority, and there is nothing to be gained by further action, the Sub-Committee may not refer the complaint for investigation or other action.
- Except in the most serious of cases, complaints that disclose a potential breach under the 2001 Code of Conduct but would not constitute a breach under the 2007 Code of Conduct are unlikely to be referred for investigation or further action.
- Where the Member is no longer a member of our authority but is a member of another authority, the complaint may be referred to that authority to consider.
- If investigation of the matter would serve no useful purpose for whatever reason, the Sub-Committee may not refer the matter for investigation.
- If the complaint is unsuitable for local investigation, the matter will be referred to Standards for England.

**CRITERIA FOR GRANTING REQUESTS FOR ANONYMITY**

The Assessment Sub-Committee will consider whether the request for anonymity meets any of the following criteria:

1	The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
2	The complainant is an officer who works closely with the subject Member and they are afraid of suffering a disadvantage to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle blowing policy).
3	The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed (in such circumstances, the Assessment or Review Sub-Committee may wish to request medical evidence of the complainant's condition).

If the complainant does fall into one of the above categories, the Assessment Sub-Committee will consider whether it would be possible to investigate the matter without the complainant's identity becoming known. In some cases, such as allegations of bullying, this may be impossible. If the Assessment Sub-Committee decide that they can proceed with the investigation or other action without the complainant's identity being revealed they may grant the complainant's request.

If the complainant does not meet the above criteria, or the Assessment Sub-Committee are of the opinion that they are unable to take action on the complaint without the complainant's identity being revealed, they will consider whether the matter is so serious that the public interest in proceeding with an investigation outweighs the complainant's request to withhold their identity from the subject Member. The Assessment Sub-Committee may then decide to refuse the complainant's request for confidentiality and proceed with the investigation, or give the complainant the option to withdraw the complaint.

**CRITERIA FOR CONSIDERING REQUESTS TO WITHDRAW A COMPLAINT**

If a complainant has requested that their complaint be withdrawn from the process, the Sub-Committee need to ask the following questions:

1. Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?

**If yes**, consider proceeding with the assessment decision.

2. Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?

**If yes**, consider proceeding with the assessment decision.

3. Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject Member, or an associate of theirs, to withdraw the complaint?

**If yes**, take advice from the Monitoring Officer on how to proceed with the assessment decision.



## OUTLINE OF THE SUBJECT MEMBERS' RIGHTS DURING THE HEARING PROCESS

### PRE-HEARING PROCESS

The subject Member has the right to:

- go to the hearing and present their case;
- call a reasonable number of witnesses to give relevant evidence to the Hearings Sub-Committee; and
- be represented at the hearing by a solicitor, barrister or any other person.

**Note** – the Hearings Sub-Committee will normally give permission for Members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.

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

The subject Member does not have to go to the hearing or be represented. If the subject Member chooses not to go to the hearing, the Hearings Sub-Committee may make a determination in their absence.

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

### HEARING PROCESS

After considering the written and verbal presentations, the Hearings Sub-Committee will reach and announce its findings of fact, whether the subject Member has failed to follow the Code of Conduct and whether a sanction should be applied. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the Hearings Sub-Committee will give the subject Member its full written decision within two weeks of the end of the hearing.

If the Hearings Sub-Committee decides that the subject Member has failed to follow the Code of Conduct and that the subject Member should be sanctioned, it may do any one or a combination of the following:

- Censure the Member. This is the only sanction available when dealing with a person who is no longer a member of the authority.
- Restrict the Member's access to the resources of the relevant authority for up to six months, which could include limiting their access to the premises of the relevant authority.
- Suspend or partly suspend the Member for up to six months.
- Suspend or partly suspend the Member for up to six months on the condition that the suspension or partial suspension will end if the Member apologises in writing, receives

### *Standards Committee Procedure Rules*

any training, or takes part in any conciliation that the Hearings Sub-Committee orders them to. Conciliation involves an independent person helping the relevant people to try and reach an agreement on the matter set out by the Hearings Sub-Committee.

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

The Hearings Sub-Committee will also arrange to publish a summary of its findings and any sanction applied in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. If the Hearings Sub-Committee finds that the subject Member has not broken the Code, the subject Member can ask the Hearings Sub-Committee not to have this information published.

The subject Member may appeal against the finding or any sanction applied by the Hearings Sub-Committee. The subject Member has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal.



Originator: Amy Kelly

Tel: 0113 39 50261

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**Report of the Assistant Chief Executive (Corporate Governance)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Procedure for external Code of Conduct investigations**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**Executive Summary**

1. The purpose of this report is to notify Members of a procedure for external Code of Conduct investigations which has recently been drafted. This procedure explains how investigations will be commissioned, how they should be conducted, how they will be monitored, and what is expected of the investigator in terms of the final report and its presentation to the Standards Committee.
2. The procedure has been broadly based on two guidance documents issued by Standards for England. These are "How to conduct an investigation" and "Local investigations and other action". However the procedure also addresses issues specific to Leeds City Council, such as the scope of the delegation to an external investigator.
3. Members of the Standards Committee have previously raised concerns with the management and length of investigations since the start of the local assessment regime. This procedure attempts to address these issues.
4. Members of the Standards Committee are asked to note the draft procedure and to provide any comments to be taken into account by the Assistant Chief Executive (Corporate Governance) when the procedure is finalised.

## **1.0 Purpose Of This Report**

- 1.1 The purpose of this report is to notify Members of a procedure for external Code of Conduct investigations which has recently been drafted. This procedure explains how investigations will be commissioned, how they should be conducted, how they will be monitored, and what is expected of the investigator in terms of the final report and its presentation to the Standards Committee.

## **2.0 Background Information**

- 2.1 This draft procedure has been broadly based on two guidance documents issued by Standards for England. These are “How to conduct an investigation” and “Local investigations and other action”. Many of the appendices have also been based on templates from the investigations toolkit which can be downloaded from the Standards for England website.
- 2.2 As well as seeking assistance from the Council’s Procurement Unit, the draft procedure has also been sent to one of the Council’s chosen external investigators for comments and feedback.
- 2.3 Members of the Standards Committee have raised concerns regarding Code of Conduct investigations in previous meetings. The main concern expressed by the Committee related to the length of time taken to complete investigations, and how these delays could be justified.
- 2.4 In addition, officers have learnt lessons from the recently completed investigations which include the need to:
- clarify the scope of the delegation to an external investigator;
  - have a clear and robust investigation plan, which includes a list of potential interviewees and the broad areas for questioning;
  - set clear deadlines which include deadlines for interviews to be completed, issuing the draft report and a final completion date and to regularly review the progress of the investigator against these agreed deadlines;
  - build in regular communications with one point of contact within the Council; and
  - liaise with Council officers who are to be interviewed as part of an investigation beforehand.

## **3.0 Main Issues**

- 3.1 The draft procedure is split into seven distinct sections, as follows:
- Section 1 – Introduction and Purpose of the Procedure
  - Section 2 – Establishing and maintaining the list of approved investigators
  - Section 3 – Commissioning an external investigator
  - Section 4 – Monitoring the investigation
  - Section 5 – Conducting the investigation
  - Section 6 – Production of investigation reports
  - Section 7 – Presentation of the final report to the Standards Committee

- 3.2 The procedure also includes template documents for the investigators to use which should ensure consistency in the quality of information presented to the Standards Committee.
- 3.3 Members of the Standards Committee will note that the procedure clearly states that Leeds City Council expects investigations to be completed within the recommended six months from the date of the Assessment Sub-Committee meeting, wherever possible. However there is an acknowledgement that this may not be possible for many reasons, including the unavailability of the parties or the complexity of the case for example.
- 3.4 In order to ensure that investigations are completed as soon as possible the procedure puts in place mechanisms to ensure that reasonable timescales are agreed between the Council and the investigator when the investigation is first commissioned.
- 3.5 The draft procedure is attached as Appendix 1 to this report. This procedure will be approved by the Assistant Chief Executive (Corporate Governance) as soon as possible, but Members of the Standards Committee are asked for any feedback on the procedure beforehand.
- 3.6 This procedure will not be included within the Constitution, but will complement the Standards Committee Procedure Rules. The procedure will be reviewed annually and Members of the Standards Committee will be asked for any comments on the workings of the procedure as part of this review.

#### **4.0 Implications For Council Policy And Governance**

- 4.1 Having a procedure for external Code of Conduct investigations will help to ensure that investigations are carried out in a timely manner, and consistency in the quality of the information presented to the Standards Committee.

#### **5.0 Legal And Resource Implications**

- 5.1 The legal and resource implications involved in carrying out local investigations are set out in the attached procedure. However there are no specific legal or resource implications to noting this report.

#### **6.0 Conclusions**

- 6.1 A procedure for external Code of Conduct investigations has recently been drafted, which will help to address the concerns raised by members of the Standards Committee in relation to the management and length of investigations since the start of the local assessment regime.

#### **7.0 Recommendations**

- 7.1 Members of the Standards Committee are asked to note the draft procedure and to provide any comments to be taken into account by the Assistant Chief Executive (Corporate Governance) when the procedure is finalised.

#### **Background Documents**

“How to conduct an investigation”, Standards for England, available at <http://www.standardsforengland.gov.uk>

“Local investigations and other action”, Standards for England, available at <http://www.standardsforengland.gov.uk>

“Local investigations and other action – Toolkit”, Standards for England, available at <http://www.standardsforengland.gov.uk>



**DRAFT**

**Procedure for  
external Code of  
Conduct  
investigations**



## Our Values



### Looking After Leeds

We are committed to improving the quality of life in Leeds and want to inspire pride in our city and communities. We will work with our partners, build on our successes and protect our city for future generations.



### Putting Customers First

We will make sure our services meet the needs of our customers and communities. We will communicate clearly and work hard to find out and respond to our customers' needs. We are committed to providing excellent services that are value for money.



### Treating People Fairly

We value the diversity of our communities and strive to ensure that everyone shares in the city's success. We will tackle discrimination and improve access to our services - especially to those with the greatest need.



### Valuing Colleagues

We know that the good work of our colleagues is key to providing excellent services. We will support colleagues and encourage them to work creatively.





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## **Section 1 – Introduction and Purpose of the Procedure**

### **Introduction**

- 1.1 Since July 2008, the Standards Committee of Leeds City Council has received and considered complaints about the behaviour of Members of Leeds City Council and Members of the Parish and Town Councils in the Leeds area. Leeds City Council has adopted the model Code of Conduct for Members as it appears within “The Local Authorities (Model Code of Conduct) Order 2007” (SI No. 1159), which is in force for the time being.
- 1.2 The Standards Committee has created three sub-committees to deal with Code of Conduct complaints. These are the Assessment Sub-Committee, the Review Sub-Committee and the Hearings Sub-Committee.
- 1.3 The Assessment Sub-Committee receives allegations and decides whether to take any action, and can therefore refer a matter for investigation or other action by the Monitoring Officer or decide not to take any action. The Assessment Sub-Committee may also decide to refer the allegation to another relevant authority or Standards for England. The Assessment Sub-Committee also receives final investigation reports prepared by both the Monitoring Officer and an Ethical Standards Officer. In the case of a Monitoring Officer’s report where there the finding is of no failure, the Assessment Sub-Committee must decide whether to accept the Monitoring Officer’s finding or refer the matter to the Hearings Sub-Committee for a hearing, or to the Adjudication Panel for England. If the Monitoring Officer’s or Ethical Standards Officer’s finding is a breach of the Code, the Assessment Sub-Committee must consider whether it should be heard by the Hearings Sub-Committee or the Adjudication Panel for England.
- 1.4 If there is a request for a review of a decision made by the Assessment Sub-Committee to take no further action, the Review Sub-Committee can consider that request. When considering such requests the Review Sub-Committee considers the allegations afresh, and also considers whether the Assessment Sub-Committee acted properly when making their initial decision. The Review Sub-Committee has the same decisions open to it as the Assessment Sub-Committee.
- 1.5 Both the Assessment and Review Sub-Committee assess complaints against a set of Local Assessment Criteria. These are agreed by the Standards Committee and are contained as an appendix to the Standards Committee Procedure Rules (within Part 4 of Leeds City Council’s Constitution).
- 1.6 If the Assessment or Review Sub-Committee decide that investigation of the matter would be in the public interest, and that if proven to be true the allegations would probably warrant some form of sanction (apart from training), they may refer the matter to the Monitoring Officer for investigation.
- 1.7 The Hearings Sub-Committee has been set up to carry out local hearings in

relation to any investigation by the Monitoring Officer or an Ethical Standards Officer which identifies a breach of the Members' Code of Conduct. If the Hearings Sub-Committee concludes that the Member has breached the Code of Conduct it has a range of sanctions open to it which are listed in the Standards Committee Procedure Rules.

### **The purpose of this procedure**

- 1.8 The purpose of this procedure is provide clarity as to how external investigators are selected and commissioned. Specifically sections 4-7 of the procedure will act as the terms of agreement between Leeds City Council and an external investigator who is chosen to carry out a Code of Conduct investigation on behalf of the Monitoring Officer.
- 1.9 The procedure covers the following:

**Section 2** Establishing the approved list of investigators

**Section 3** Commissioning an external investigator

**Section 4** Monitoring the investigation

**Section 5** Conducting the investigation

**Section 6** Production of investigation reports

**Section 7** Presentation of the final report to the Standards Committee

### **Review of this procedure**

- 1.10 This procedure will be reviewed on an annual basis and Members of the Standards Committee will be asked for any comments on the workings of the procedure as part of this review.

## **Section 2 – Establishing the approved list of external investigators**

### **How the approved list is established**

- 2.1 The approved list is kept by Leeds City Council's Procurement Unit. The approved list is made up of Investigators who display the following skills or experience:
- Understanding of the Code of Conduct or experience of applying a similar code of practice;
  - Experience of conducting interviews;
  - Experience of report writing; and
  - Objectivity.
- 2.2 The Investigators on the approved list are also checked to ensure that they are not mandatorily excluded and will also have been assessed on their business credentials by the Procurement Unit. The Council's Procurement Unit will undertake the review of the applicants business credentials whilst the Monitoring Officer (or other suitable officer) will appraise the candidates' professional capabilities.

### **How the approved list is updated**

- 2.3 The existence of the approved list is advertised on the Council's supplier contract management system and applications to join the list can be made at any time. In order to make an application, interested parties should visit the Supplier and Contract Management System (SCMS) (<http://scms.alito.co.uk>) which is the procurement website for all the Councils within the Yorkshire and Humber region. The website provides advice and guidance on the procurement process used by the Council, and allows applicants to register their details and tell the Council about the services they can provide. Applicants to join the list may also contact the Council's Procurement Unit by telephone on 0113 2474007.
- 2.4 After expressing an interest in being added to the approved list the applicant will be sent a copy of this procedure. In order to be considered for the approved list the applicant will have to provide an acceptance letter agreeing to the terms of this procedure and the completed confidentiality agreement to the Procurement Unit (the relevant form is attached as Appendix 1 to this procedure). Applicants should also be aware that Code of Conduct investigations are covered by the Local Government Act 2000, and information gathered by a Monitoring Officer during such an investigation is considered 'confidential' in accordance with Section 63 of this Act.
- 2.5 The Procurement Unit will then assess the applicant's business credentials in terms of financial standing and potential cost of an investigation. The Monitoring Officer (or other suitable officer) will appraise the applicant's skills and experience (as outlined in paragraphs 2.1 and 2.2 above).

### **Review of the approved list**

- 2.6 The Procurement Unit will carry out periodic reviews of the approved list and the business credentials of the listed solicitors. In addition, at the conclusion of the investigation (when the matter has been considered by the Assessment Sub-Committee and Standards Committee, if appropriate), the Head of Governance Services will contact the following parties for feedback on the investigations process:
- The subject Member;
  - The Chair of the Standards Committee<sup>1</sup>;
  - The Monitoring Officer;
  - The complainant; and
  - Any witnesses.
- 2.7 Once appropriate feedback has been received, the Head of Governance Services will share this feedback with the Monitoring Officer and decide whether a debrief meeting is required with the investigator. The Head of Governance Services will also consider whether any negative feedback should be passed to the Procurement Unit to be considered as part of the maintenance of the approved list of investigators.

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<sup>1</sup> In relation to an Investigator's performance at an Assessment Sub-Committee or Hearings Sub-Committee meeting.

**Confidentiality Agreement**

**DATED**

**(day)/(month)/(year)**

**THIS AGREEMENT  
BETWEEN**

**xxxxxxxxxxxxx**

**and**

**LEEDS CITY COUNCIL**

**FOR THE xxxxxxxxxxxx**

**on behalf of insert**

**Reference No insert**

**xxxxxxx  
Leeds City Council  
Civic Hall  
LEEDS  
LS1 1UR**



**THIS AGREEMENT** is made **BETWEEN:**

- (1) **xxxxxxxxxx** and
- (2) **LEEDS CITY COUNCIL** who are jointly called (“the Parties”)

**WHEREAS:**

- (a) It is proposed that the Parties shall disclose to each other certain confidential information
- (b) The Parties accordingly wish to record their agreement to maintain the confidentiality of such information

**NOW IT IS HEREBY AGREED** as follows:

## **1 Interpretation**

- 1.1 In this Agreement unless the context requires otherwise the following expression shall bear the following respective meaning:

‘Confidential information’ means any private confidential or secret information in the possession of any member of the Parties in whatever form contained relating to the business or affairs of any product or project of any member of the Parties (including but not limited to information relating to the identity and requirements of any customer of any member of the Parties and information contained or embodied in documents computerised information tapes specifications equipment and or data of any kind) and internal prices

- 1.2 Headings are for convenience only and shall not affect the interpretation of this Agreement

## **2 Confidentiality**

- 2.1 Subject to Clause 3.1 below the Parties jointly undertake:

2.1.1 that they will treat Confidential Information directly or indirectly disclosed to each other as strictly confidential and will

not without obtaining the prior written consent of the other party  
disclose any part of such Confidential Information to any third  
party

2.1.2 that it will not make any use of any part of the Confidential  
Information disclosed to it except for the following purposes:

- (i) determining the desirability and practicality of  
collaboration between the parties on agreed work relating  
to the Confidential Information;
- (ii) the carrying out of any collaboration between the parties  
on agreed work relating to the Confidential Information;
- (iii) any other purpose which may be expressly permitted in  
writing by the parties

### **3 Exceptions**

3.1 The undertaking contained in this Agreement shall not apply to any part of the  
Confidential Information which the Parties can demonstrate to have been  
known to it or to have been public knowledge at the time of its disclosure the  
other or to have been disclosed to it (otherwise than by or on behalf of the  
other Party) or to have become public knowledge subsequent to such  
disclosure (provided that this has not been caused by any breach of any  
obligation of confidentiality owed to each party pursuant to the Agreement)

### **4 Indemnity**

4.1 The Parties hereby agree that if either Party shall breach any of its  
undertakings contained in this Agreement it shall indemnify the other party

against all and any loss claim liability damage or demand arising out of or in connection with such breach

## **5 Property Rights**

5.1 All Confidential Information disclosed by or on behalf of one of the Parties shall remain the sole property of that Party and its disclosure shall not be deemed to confer upon the Recipient any rights whatsoever with respect to any part thereof except for the purpose set out in Clause 2.1.2 above. The Recipient will forthwith on request by the other party return to it all Confidential Information which has been given to it or to a third party at its request together with all copies thereof

**IN WITNESS** whereof this Agreement has been executed as a Deed by the parties

on the date set out below

Signed for and on behalf of  
**insert**

Signature

Name

Title

Signed for and on behalf of

**LEEDS CITY COUNCIL**

Signature 1

Signature 2

Name

Name

Title

Title

## Section 3 – Commissioning an external investigator

### Overview

- 3.1 The scope of the investigation will be agreed with the chosen Investigator at the start of the investigation through the production of an investigation plan. The plan must be prepared by the Investigator and agreed with the Head of Governance Services in accordance with clause 3.14. This plan will set out the various 'milestones' in the investigation process and how long the investigation is likely to take. The plan will also incorporate regular progress updates to the Head of Governance Services through the Senior Corporate Governance Officer throughout the investigation process. The Standards Committee of Leeds City Council expects investigations to be carried out within the six month period following the Assessment Sub-Committee meeting which initially assessed the complaint wherever possible, as advised by Standards for England. Where unexpected delays occur, Investigators must have regard to clause 4.5 of this procedure.
- 3.2 During the investigation process there may be occasions when the Investigator wishes to refer the case back to the Assessment Sub-Committee or defer the investigation for whatever reason. Any such decisions will only be made by the Monitoring Officer and as soon as an Investigator becomes aware of such circumstances they should immediately notify the Monitoring Officer so she can consider the issue. The Monitoring Officer will decide whether the case should be referred back to the Assessment Sub-Committee for further consideration.
- 3.3 Once the Investigator considers that the investigation is complete and has reached a finding as to whether the Member has breached the Code of Conduct or not, they will be required to submit a draft of their final report to the Head of Governance Services and the Monitoring Officer, before issuing such a draft to the parties for comments. The Monitoring Officer reserves the right to decide when the investigation is complete and when the report is of an acceptable quality to be put before the Standards Committee – Assessment Sub-Committee for consideration.
- 3.4 Once the final report has been issued, the Investigator will be required to attend the Assessment Sub-Committee meeting when the report is considered in order to present their findings. This is to allow the Monitoring Officer to act as the legal advisor to the Sub-Committee. The Investigator will also be required to present their findings at any subsequent meeting of the Hearings Sub-Committee or Adjudication Panel Case Tribunal.

## General standards of conduct

- 3.5 Leeds City Council expects all its contractors, suppliers or service providers to abide by the following minimum standards of general conduct:

**Appointments** – You must keep appointments and arrive on time. If it is not possible to arrive on time the customer should be informed.

**Confidentiality** – Any personal information that is supplied by the Council, or any other personal information that is acquired during the course of the investigation must be kept confidential.

**Dress Code** – You should wear appropriate clothing which does not bear wording or images that could cause offence. If tattoos or body markings could cause offence, they should where possible, be covered up.

**Customer Service** – The personal conduct of the Investigator must not cause offence or personal harassment to a customer. This includes unkind, embarrassing, inflammatory, sexual, threatening or damaging words or gestures.<sup>2</sup>

**Difficult situations** – There may be occasions where you might feel uncomfortable with the circumstances or behaviour of a customer and/or their guests. For example a customer who is under the influence of drugs or alcohol, or who is verbally abusive. If a situation like this occurs, and you feel you cannot work in these circumstances, explain to the customer, if possible, why you are leaving and report the problem to the Council (through the Head of Governance Services).

**Violence at work** – Occasionally contractors may come across situations where violence or the threat of violence to them or others becomes apparent. It is advisable to try and minimise confrontation as soon as possible and not be drawn into arguments with others. If the situation escalates, for safety reasons, it is acceptable to leave the premises as quickly as possible and tell the customer why. If incidents do occur tell the Council (through the Head of Governance Services) as soon as possible.

- 3.6 The more specific requirements of external investigators are covered below.

### Seeking initial expressions of interest for undertaking an investigation

- 3.7 After a decision to refer a case to the Monitoring Officer for investigation by either the Assessment or Review Sub-Committee, the Head of Governance Services will review the “approved list” to identify appropriate investigators to carry out the investigation. This decision may be made on the basis of:
- Availability;

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<sup>2</sup> Depending on the nature of the investigation and the allegations it may be necessary to highlight to a witness unkind, embarrassing, inflammatory, sexual, threatening or damaging words or gestures.

- Cost; and
  - Connections with any previous cases investigated by the Investigator.
- 3.8 Once potential investigators have been identified, they will be sent information regarding the complaint including:
- A copy of the original complaint;
  - Any readily obtainable information presented to the Assessment or Review Sub-Committee;
  - A copy of the covering report presented to the Assessment or Review Sub-Committee;
  - A copy of the Assessment or Review Sub-Committee’s Decision Notice;
  - Details of any training undertaken by the subject Member;
  - Contact details of the subject Member;
  - Details of the subject Member’s membership of Council committees, sub-committees and outside bodies, both currently and at the time of the alleged conduct;
  - A copy of the written undertaking to abide by the Code of Conduct completed by the subject Member; and
  - Any other relevant and obvious background information relating to decisions made or action taken by the Council referred to in the complaint and not supplied by the complainant.
- 3.9 The potential investigators will also be sent a copy of the “Procedure for external Code of Conduct investigations” for reference. As the investigators are on the “approved list” of investigators held by the Procurement Unit, they will already have signed the pro-forma agreement to the requirements of the procedure.
- 3.10 Each potential investigator will be asked to consider whether they may have any direct or indirect personal conflict of interest arising from the complaint. For example, the investigator must not participate if they have a direct financial interest, or a family member or friend is involved. If this is the case they should notify the Head of Governance Services that they are unable to accept the investigation.
- 3.11 Each potential investigator will also be asked to provide the following information to the Head of Governance Services within five working days of being sent the case file and procedure:
- An outline investigation plan;
  - Proposed timescale for the investigation;
  - Details of the estimated cost of the investigation<sup>3</sup>;
  - Details of any professional experience that is relevant to the investigation.
- 3.12 The Head of Governance Services will evaluate the responses from each investigator and identify the most appropriate investigator for the case.

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<sup>3</sup> This will include potential costs for any follow up work required of the Investigator, for example, their attendance at a Consideration meeting, a Standards Committee Hearing or an Adjudication Panel Case Tribunal or Appeals Tribunal.

### **Issuing a formal invitation to undertake the investigation**

- 3.13 The Head of Governance Services will place an order with the chosen investigator to confirm their appointment. This will make clear the scope of the delegation being provided to the Investigator and the requirement to adhere to the provisions of Sections 3-7 of this procedure.

### **Requirement to produce an investigation plan**

- 3.14 The Investigator is required to produce a detailed investigation plan within ten working days of the order being placed. Appendix 1 is an investigations plan template. The plan should contain the following information:
- The complaint made against the subject Member. This may require clarification from the complainant.
  - The paragraphs of the Code of Conduct that may have been breached. The Investigator does not need to accept the complainant's interpretation of what paragraphs may have been breached. It is helpful to breakdown each potential failure to comply into the component parts of each provision. For example, in considering paragraph 6(a) the Investigator will need evidence to demonstrate that:
    - the Member used their position;
    - the Member used their position improperly; and
    - the Member conferred or attempted to confer an advantage or disadvantage.
  - The facts which need to be determined to establish if the Member breached the Code and to decide what the appropriate finding might be. They need to include:
    - Facts which would establish if the conduct happened as alleged;
    - Facts that would need to be proven to show that the conduct constituted a breach of the Code; and
    - Facts which may aggravate or mitigate the alleged breach, for example, provocation or an apology.
  - The evidence needed to determine the issues outlined in the plan. This includes who the Investigator will need to interview and why.
  - The evidence that has been supplied by the complainant.
  - How the Investigator plans to gather the evidence they need.
  - A list of potential interviewees, details regarding the areas for questioning for each interviewee, and any potential issues with the interview process.
  - How long the investigation is likely to take.
- 3.15 Once the investigations plan has been provided to the Head of Governance Services, he will contact the Investigator to discuss and agree the following matters:
- A firm deadline (or completion date);
  - Interim deadlines (dates when key milestones in the investigation are reached or a programme of updates); and
  - A payment structure (in some circumstances it may be appropriate for the authority to pay per stage or work completed).

- 3.16 Once the contents of the investigation plan have been agreed and a formal order raised for the investigation, the progress of the investigation will be monitored by the Senior Corporate Governance Officer who will liaise with the Head of Governance Services and the Monitoring Officer as appropriate. The Senior Corporate Governance Officer will be the Investigator's first point of contact for issues arising during the investigation and the Investigator will be advised of the relevant contact details in their appointment letter.



# Investigation plan

Case No:

Date received by standards committee:			
Date referred to investigator:			
Ref No:			
Subject member:		Complainant:	
Authority:		Investigator:	

Target for monitoring officer's receipt of draft report

Date due:	
Explanation:	

Target for issue of draft report

Date due:	
Explanation:	

Target for issue of final report

Date due:	
Explanation:	

**Case analysis**

<b>Behaviour alleged</b>	
<b>Relevant Code paragraphs</b>	
<b>Issues for determination</b>	
<b>Evidence required</b>	
<b>Evidence obtained</b>	

To add additional analysis, copy and paste the above table.

**Interviews:**

<b>Name of interviewee</b>	<b>Broad areas to question and any issues</b>

**Interview target dates:**

<b>Date for completion of interviews:</b>	
---	--

**Other matters**

**Identify any thoughts/lines of inquiry not outlined in the table and also highlight any problems in the referral process.**

[Empty light green box for notes]

**Approved by:** .....

(Head of Governance Services)

**Date:**.....

## **Section 4 – Monitoring the investigation**

### **Maintenance of the investigation plan**

- 4.1 Once the investigation plan has been completed in accordance with Section 3 of this procedure, it should be kept under review by the Investigator. If at any stage during the investigation there are significant changes to any of the information in the investigations plan, an investigation plan review will need to be completed and submitted to the Senior Corporate Governance Officer, in accordance with Section 5 (Conducting the investigation).
- 4.2 At the end of the investigation the Investigator should have documents which chart the approach they took during the investigation, the reasons for this approach, and when their approach changed. The Investigator will not be required to share these documents with any of the parties, but they will provide an audit trail in the event of a complaint or review of the investigation itself.

### **Requirement to provide a monthly update of progress**

- 4.3 The Investigator will be required to provide a brief update of their progress against the timescales outlined in the investigation plan every four weeks. This update should be provided to the Senior Corporate Governance Officer. In addition the Senior Corporate Governance Officer may contact the Investigator at any time to seek a progress report on behalf of the Head of Governance Services, the Standards Committee or the Monitoring Officer.
- 4.4 As soon as any key milestones in the investigation have been reached, as identified in the investigation plan, the Investigator must contact the Senior Corporate Governance Officer to confirm this.

### **Complaints about the investigation**

- 4.5 If the Investigator, the Head of Governance Services or the Monitoring Officer is made aware of a complaint about the investigation, they must first consider the nature of the complaint.
- 4.6 There are two types of complaints which can be made about the investigation. These are:
- Complaints about the conduct of the investigation (service complaints); and
  - Complaints about the interpretation and reasoning in the Investigator's report.<sup>4</sup>
- 4.7 Service complaints will occur when a party criticises the actions of an Investigator, such as:

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<sup>4</sup> Advice for investigators dealing with this type of complaint is contained in Section 4 of this procedure.

- Administrative errors (e.g. the misspelling of a name);
  - Failure to communicate;
  - Criticism of the manner in which the investigator behaved; and
  - Criticism of the length of time it took to conclude the investigation.
- 4.8 Service complaints will be processed through the Corporate Complaints system in accordance with the Leeds City Council Compliments and Complaints Policy. The Compliments and Complaints Policy is available to view on the Council's website at the following address:  
<http://www.leeds.gov.uk/page.aspx?pageidentifier=B86E4EBD055F708180256E1D003AF927>
- 4.9 Should the Investigator, Head of Governance Services or Monitoring Officer receive a service complaint, they should direct the complainant to the Corporate Complaints Team by providing them with the following contact details and a copy of the 'Let us know' complaints leaflet:
- Telephone number: 0113 2224405 (Monday – Friday 8am – 6pm)
  - Email address: [complaints@leeds.gov.uk](mailto:complaints@leeds.gov.uk)
  - Freepost address:  
Freepost RLZR-ELTX-RUEH  
Leeds City Council  
PO BOX 657  
LS1 9BS
  - Or advise them to visit a Council service point.
- 4.10 Whilst a service complaint is being processed, the investigation process, including writing the report, **should not be suspended** while a complaint about the investigation is dealt with. The only exemption to this is if a service complaint is so substantive that it would not be appropriate for the same Investigator to continue on the case while the service complaint is ongoing. In these cases the investigation will be referred back the Monitoring Officer whilst the complaint is resolved.
- 4.11 If the Investigator, Head of Governance Services or Monitoring Officer receives a complaint which comments on interpretive matters and service issues, they should write to the complainant outlining which matters should be referred to through the Compliments and Complaints procedure and which matters are differences of interpretation which will not be considered as part of the complaint.

## Section 5 – Conducting the investigation

### Basic principles of an investigation

- 5.1 The Investigator must bear in mind that the process can be a frightening and stressful experience from the subject Member(s), witnesses and complainant(s).
- 5.2 The Investigator must ensure that:
  - They establish what happened in a fair and objective manner;
  - They set out clearly the reasoning for the finding reached; and
  - They complete the investigation promptly and proportionately.
- 5.3 Interviews must be conducted in such a way as to obtain the most informed, reliable evidence possible, not to catch out interviewees.
- 5.4 Standards for England recommend that most investigations are carried out, and a report on the investigation completed, within six months of the original complaint being assessed by the Assessment Sub-Committee. The Standards Committee of Leeds City Council expect investigations to be completed within this recommended timescale wherever possible. However realistic targets should be agreed between the Investigator and the Head of Governance Services so that the Standards Committee can monitor the progress of the investigation and explore the reasons for any delay.
- 5.5 The Investigator should conduct their investigation in accordance with the investigations plan agreed with the Head of Governance Services. The Investigator must keep the agreed plan under review to ensure all necessary information is being obtained as well as identifying whether there are additional enquiries required and whether the investigation should be limited or directed in another way. If at any stage during the investigation there are significant changes to any of the information in the investigations plan, an investigation plan review will need to be completed and submitted to the Senior Corporate Governance Officer. Appendix 1 is the investigation plan review template.
- 5.6 Once the Investigator's appointment has been confirmed in accordance with Section 3 of this procedure, the Investigator must contact the complainant and the subject Member to advise them of their contact details and provide them with a preliminary timescale for the investigation. Appendix 2 is a template letter for contacting the subject Member. Standards for England also suggest that the Investigator should enclose a copy of the documents which form the allegations against the subject Member to them for information, which they can then share with their representative (if they have one). However, this is a matter for the discretion of the Investigator. If the case is sensitive, the Investigator may wish to withhold the documents which form the allegation until the subject Member is interviewed.

## Gathering documentary evidence

- 5.7 Documentary evidence, where this exists and is necessary to the investigation, should be sought before any interviews are conducted and at the earliest opportunity. It would be helpful if the documents which are required are listed in the investigations plan with details of who can provide them. This should form the basis of the Investigator's initial contact with the parties and other witnesses.
- 5.8 When initially contacting the subject Member, the Investigator should ask them to provide an initial response to the allegation in writing, which gives the subject Member the opportunity to admit to the breach if they would like to do so, which may save time in the investigation (see Appendix 2 for the template letter for contacting the subject Member). The written response may also provide useful additional information for use during the interview stage of the investigation.
- 5.9 When requesting documentary information the Investigator should ensure that;
- the request is made in writing;
  - the Investigator's legal authority and broad purpose for requesting the information is explained (details of the complaint are not required);
  - the confidentiality requirements that relate to the information are outlined;
  - a deadline is set for the response; and
  - a contact name and number are provided for further enquiries.
- 5.10 If the evidence is held on a computer it is good practice to identify the person using the computer, and it may be appropriate to search the hard drive for deleted or corrupted documents (a specialist firm may be employed to facilitate this). Prior to a specialist firm being employed, the Investigator must discuss with the Head of Governance Services the necessity to obtain such information and the likely costs. The Council would also require assurances as to the appropriate experience and reputation of the proposed firm.
- 5.11 If the information is highly sensitive, the Investigator may not wish for the subject Member or other party to be made aware of a request for evidence. For example, if the Investigator is concerned that this might lead to destruction of evidence or to improper collaboration of witnesses. In such circumstances, it may be appropriate for the Investigator to arrange to meet with the witness, and to make the request for evidence during the meeting. The Investigator must make it clear what powers they have to obtain information.
- 5.12 If any party refuses to provide the information requested, the Investigator should remind them of any legal obligation they have to provide it (e.g. Regulation 14(4)(b) of the Standards Committee (England) Regulations 2008). Alternatively, the Investigator could ascertain whether there is another route to obtaining the same information or whether alternative information can be obtained instead.

- 5.13 If it is not possible to obtain any of the information, and it is essential to completing the investigation, consideration should be given to referring the matter back to the Assessment Sub-Committee. The Assessment Sub-Committee may then refer the case to Standards for England who would be able to use their statutory powers to compel the provision of this information. Any such decision to refer the case back to the Assessment Sub-Committee would need to be made by the Monitoring Officer, with advice from the Investigator. Alternatively, the Investigator should state in their report that such information, which was crucial to the investigation, could not be obtained and should draw such inferences as appropriate.

### **Conducting interviews**

- 5.14 Standards for England advise that the subject Member should normally be interviewed at the end of the investigation after all the evidence has been gathered by the Investigator. This should allow the Investigator to put that evidence to the subject Member and obtain their responses to it. However this is a matter of discretion for the Investigator and depends upon the nature of the complaint. It would be helpful to ascertain at an early stage whether the subject Member agrees with the allegation which may help streamline the investigation. This will especially be the case if the subject Member has failed to provide a written response to the allegation as requested in paragraph 5.8 above. It may also be useful to obtain the subject Member's view as to what happened, particularly if it is an element of one word against the other, as it may well be that there is a misinterpretation which needs to be put to the complainant and other witnesses.
- 5.15 Where the Investigator has concerns that witnesses may collude or use information provided to them, the Investigator should consider carrying out consecutive interviews on the same day.
- 5.16 If the complainant and the subject Member are interviewed towards the beginning of the investigation, the Investigator should consider re-interviewing them near the end, which may allow the Investigator to get the interviewees to agree facts and give them an opportunity to comment on issues that have been raised during the course of the investigation. The Investigator should also present potential inconsistencies to the relevant parties for comment.
- 5.17 The Investigator may conduct face-to-face interviews rather than telephone interviews in the following circumstances:
- The matters involved are sensitive;
  - The interviewee is vulnerable;
  - The Investigator will need to refer to multiple documents during the interview;
  - The interviewee wishes to have a legal representative present;
  - The interview is with the subject Member (unless in the circumstances of the case the Investigator thinks a face-to-face interview is unnecessary); and
  - The circumstances of the case require the Investigator to conduct a face-to-face interview with the complainant.



- 5.18 The Investigator may conduct a telephone interview if:
- There are significant resource implications, either in terms of cost or time in conducting a face-to-face interview; and
  - The interview does not fall into one of the categories outlined above.
- 5.19 If a subject Member or witness insists on a face-to-face interview then serious consideration should be given to their request. The Investigator should specifically check that there is no medical or disability-related reason for their request. If there is, the Investigator should conduct a face-to-face interview. If there is no such reason, then the decision is up to the Investigator. If the Investigator decides to proceed with a telephone interview despite their request, then this decision should be outlined in writing on the case file. This is to demonstrate that it was both proportionate and reasonable.
- 5.20 The Investigator must not conduct joint interviews, as it is important that each witness gives their own account without having their recollection influenced by hearing another person's account. However, an interviewee may have a friend or advisor present unless that person is a witness and they should be asked to keep the matters confidential. They should also clarify their role during the interview. If the interviewee is a vulnerable person or a minor, the Investigator should ensure that they are accompanied by another person when conducting the interview. This may involve suspending the interview to allow another person to accompany that witness. Again that person may be a friend or advisor unless that person is a witness and they should be asked to keep the matters confidential and to clarify their role during the interview.
- 5.21 When conducting a face-to-face interview, the Investigator should ensure that the venue meets the following criteria:
- It is mutually convenient;
  - Is preferably on neutral territory, although circumstances may mean this is not possible;
  - In a private room where the interview cannot be overheard;
  - In a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or the subject Member; and
  - Is safe for the Investigator.
- 5.22 It may sometimes be appropriate to interview someone at their home, but this should generally be at the request of the interviewee.
- 5.23 The following information should be provided to the interviewee in writing prior to the interview:
- Confirmation of the agreed time, date and venue or that it will be a telephone interview;
  - Confirmation that the interview will be recorded, if appropriate;
  - Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation. They should also not be a Leeds City Council (or Parish

Council) officer or a Standards Committee Member. The Investigator should ask the interviewee to provide them with the name and status of their representative before the interview, and if the Investigator is unsure they should contact the Senior Corporate Governance Officer for assistance;

- The legal framework within which the Investigator is conducting the interview;
- How the information provided by the interviewee will be used;
- The circumstances in which the information given by the interviewee may be made public;
- The confidentiality requirements that the interviewee is under;
- Details and copies of any documents the Investigator will refer to during the interview;
- In the case of the subject Member, details and copies of any evidence the Investigator has gathered and which they may refer to in their report. The Investigator does not have to disclose witness testimony prior to the interview, depending on the nature of that testimony and whether the Investigator wants the interviewee's account prior to putting the witness's testimony to them.
- The Investigator should consider providing an outline of the areas they intend to cover at the interview; and
- The Investigator's contact details in case they have any questions or concerns before the interview.

5.24 Appendix 3 is the pre-interview letter template, and should be used for the purposes outlined above. When the Investigator is planning to interview a Leeds City Council officer they must also contact the Senior Corporate Governance Officer beforehand, in order that the interviewee can be briefed on their role and the purpose of the investigation.

5.25 If the Investigator needs to confirm one or two factual details with a Leeds City Council officer (or a Parish officer) they may contact them by phone and does not need to forewarn them. However, when obtaining this information the Investigator should:

- Orally outline all of the information they would have otherwise provided in writing as set out in paragraph 5.23;
- Check that they are happy to give the information straight away, rather than at an agreed date in the future; and
- Confirm the detail of the information the officer provides in writing.

5.26 Interviews should be planned in advance, using the interview plan template attached as Appendix 4 to this procedure. The Investigator should plan their questions using the following format:

- Divide the information required into discreet issues;
- Make a note of the evidence which has already been obtained about each issue;
- Note how they would briefly summarise the evidence to the interviewee.

- 5.27 All important interviews should be audio recorded wherever possible. The only exception is when the interview is likely to cover only a small number of factual matters. In this case, it may be more appropriate to resolve these factual matters in writing. Before recording an interview the Investigator should:
- Obtain the consent of the interviewee before starting to record the interview;
  - Ask them to confirm for the record that they consent to the recording;
  - Confirm for the record who they are and the powers under which they are conducting the interview;
  - State the date and time of the interview;
  - Ask the interviewee to confirm that they received the Investigator’s letter outlining the interview arrangements;
  - Ask the interviewee to confirm that they read and understood the letter and if they have any questions about the information in the letter;
  - If the interviewee is the subject Member, or if the interviewee is unclear about any of the information, the Investigator should orally repeat the information in the letter;
  - Explain that the interviewee can take a break whenever they choose, and they will be offered a break after one hour;
  - Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end; and
  - Explain that they can ask the Investigator to rephrase a question if they do not understand it.
- 5.28 There is a suggested Interview Preamble attached as Appendix 5 to this procedure.
- 5.29 During the interview the Investigator should consider the following advice:
- During the interview with the subject Member, the Investigator should begin by asking some background questions, such as “How long have you been a Member?” or “What training have you had on the Code of Conduct?”;
  - The Investigator should not ask multiple questions, they should ask one question at a time and allow the interviewee to answer before asking another;
  - The Investigator should not dart back and forth between different issues so as not to cause confusion to either party, and tackle one subject issue at a time;
  - The Investigator should deal with each issue by starting with a broad open question about the subject, drill down for information with specific open questions, and conclude the area by asking closed questions to confirm what they have been told;
  - Where relevant, the Investigator should ask the interviewee to reconcile differing accounts;
  - If there are two people conducting the interviews, the first interviewer should ask the open questions and the second interviewer should then pick up the points to be clarified at the end of each subject area and ask closed questions to confirm what was said;

- The Investigator should not ask leading questions, e.g. “You said this, didn’t you?”, and should not ask the interviewee to speculate;
  - The Investigator should accurately put the evidence of other interviewees to the interviewee and ask for their response;
  - When asked, the Investigator should explain the relevance of their question;
  - The Investigator must not allow the interviewee’s lawyer or representative to answer a question, but must allow the interviewee to stop to obtain advice whenever they choose;
  - If the interviewee becomes upset or unwell the Investigator must offer them a break;
  - The Investigator should never raise their voice, and should only interrupt if the interviewee is being unreasonable or is not providing relevant information;
  - The Investigator should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then the Investigator should move on to another point or issue;
  - The Investigator should not question the subject Member about matters which fall outside the scope of the original allegation;
  - If the interviewee asks for a break, the time of the break should be recorded and the time that the interview was resumed. The Investigator should also ask the interviewee to confirm for the record that they did not discuss anything about the case during the break; and
  - To close the interview, the Investigator should state the time the interview finished, thank the interviewee for their time and outline what will happen next.
- 5.30 Following the interview the Investigator should send the interviewee a copy of the transcript. The Investigator should state in the letter that if they do not hear from the interviewee by a specified date, they will assume the transcript is agreed.
- 5.31 If the content of the transcript is disputed, the Investigator should check the discrepancies against the recording of the interview. If the transcript is confirmed by the recording, the Investigator should write to the interviewee to inform them of this. Appendix 6 is the interview statement/transcript letter template to be used for this purpose. When the matter is referred to the Standards Committee, the Investigator should submit the transcript, the recording, the interviewee’s letter outlining the dispute and their response.
- 5.32 After the interview, the Investigator should:
- review the investigation plan in the light of the information gathered during the interview (if considered necessary);
  - review all the evidence they gathered to determine if there are any gaps in it;
  - take a view on all the disputed relevant matters. If the Investigator is unable to reach an opinion, they should seek further information or decide that they are unable to reach a conclusion;

- weigh up all the evidence and decide if the alleged conduct occurred;
- consider whether, if the subject Member acted as alleged, there is sufficient evidence to meet the factors identified in the investigation plan to demonstrate a failure to comply with the Code of Conduct, or whether further information needs to be obtained; and
- consider whether, if the subject Member has breached the Code, there is evidence of any mitigating or aggravating circumstances. If not, the Investigator may need to seek further information.

### **Evidence of other potential breaches**

- 5.33 If during the investigation the Investigator uncovers evidence of conduct by a Member which breaches the Code of Conduct, but extends beyond the scope of the investigation referred to them, they should notify the Senior Corporate Governance Officer as soon as possible.
- 5.34 The Investigator's powers only relate to matter which has been referred to them and agreed in the investigation plan. If the new breach does not directly relate to the allegation they are investigating, the Investigator should inform the party they obtained the information from that they cannot investigate the possible breach as part of the existing investigation. The Investigator should also advise them that they may wish to make a separate complaint to the Standards Committee through the Monitoring Officer. Alternatively, the Investigator could make a new complaint about the conduct in the same way.<sup>5</sup>
- 5.35 If the new breach is discovered by the Investigator through documents obtained as part of the investigation, they should discuss the issue with the Monitoring Officer to ask whether to make a referral to the Assessment Sub-Committee in accordance with paragraphs 5.41 to 5.43 below. Alternatively, the Investigator<sup>6</sup>, the Monitoring Officer or the Head of Governance Services could make a new complaint to the Standards Committee.

### **Referring cases back to an Ethical Standards Officer or Standards Committee**

- 5.36 If the case was referred to the Monitoring Officer to investigate by an Ethical Standards Officer (ESO), the Investigator may wish to request that the case is referred back to the ESO in the following circumstances:
- There is evidence of a further possible breach that relates directly to the investigation, revealing for instance, a consistent pattern of behaviour.
  - The Investigator has genuinely been prevented from completing the investigation, for example the subject Member has refused to co-operate.

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<sup>5</sup> Consideration will need to be given to whether the Investigator may appear biased against the subject Member for the remainder of the investigation if they submit a new complaint regarding that Councillor's behaviour.

<sup>6</sup> Consideration will need to be given to whether the Investigator may appear biased against the subject Member for the remainder of the investigation if they submit a new complaint regarding that Councillor's behaviour.

- 5.37 If the investigation is being obstructed by an officer of the Council, the Investigator should inform the Senior Corporate Governance Officer as this may be a disciplinary matter for the Council to consider under separate procedures. This is not a reason for the Investigator to request that the case is referred back to the ESO.
- 5.38 If the Investigator considers that the case does need to be referred back to the ESO they should contact the Monitoring Officer in writing outlining the reasons why they believe that an ESO should carry out the investigation. Any such request should be made prior to the completion of the investigation.
- 5.39 The Monitoring Officer will contact the Investigator as soon as possible to discuss whether their request will be forwarded to Standards for England. This request can only be made once during the course of an investigation, so it is important that the Investigator and the Monitoring Officer agree that it is the correct course of action to take.
- 5.40 If the Investigator's request is forwarded, the ESO will respond to the Monitoring Officer within 21 days with either a request that the Investigator continue with the investigation or that they accept the matter as requested. The Monitoring Officer will notify the Investigator of the decision within 5 working days of receiving it.
- 5.41 If the case was referred to the Monitoring Officer to investigate by the Standards Committee, the Investigator may wish to request that the case is referred back to them in the following circumstances:
- Evidence has been uncovered suggesting a case is more or less serious than may have seemed apparent to the Standards Committee originally. Furthermore, had the Standards Committee been aware of that evidence they would have made a different decision about how the case would be dealt with.
  - The subject Member has died, is seriously ill<sup>7</sup> or has resigned from the authority and the Investigator is of the opinion that it is no longer appropriate to continue with the investigation.
- 5.42 If the Investigator considers that the case does need to be referred back to the Standards Committee they should contact the Monitoring Officer in writing outlining the reasons why. Any such request should be made prior to the completion of the investigation.
- 5.43 The Monitoring Officer will contact the Investigator as soon as possible to discuss whether their request will be forwarded to the Standards Committee for consideration. The Investigator should then notify the subject Member and the complainant of a decision to refer the allegation back to the Standards

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<sup>7</sup> According to Standards for England's guidance, 'seriously ill' means that the Member has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This can include terminal illness or a degenerative condition. The investigator would be expected to establish this from a reliable independent and authoritative source other than the subject Member. Stress brought on by the investigation is unlikely to fall into this category.

Committee, and provide timescales within which the matter will be dealt with. This information will be provided by the Senior Corporate Governance Officer.

### **Deferring investigations**

- 5.44 The Monitoring Officer can choose to defer an investigation when any of the following conditions are met:
- There are ongoing criminal proceedings or a police investigation into the subject Member's conduct.
  - The Investigator cannot proceed with their investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding.
  - The investigation might prejudice another investigation or court proceeding.
  - There is an ongoing investigation by another regulatory body.
  - A key party has a serious illness.
  - A key party is genuinely unavailable.
- 5.45 Where there is an ongoing investigation or related proceedings being carried out by another body, the Investigator should make enquiries about the nature of the investigation or proceedings.
- 5.46 If the Investigator considers during an investigation that any of the above circumstances apply, they should contact the Monitoring Officer and seek their consent for the deferral. When doing so the Investigator must gather sufficient information which will enable the Monitoring Officer to come to a decision. Such sufficient information may be obtained from the police or other organisation involved or alternatively from the complainant and/or the subject Member. However care must be taken as to whom is asked for relevant information. The Investigator should also highlight those areas where an investigation may be possible (i.e. where there is no overlap) in the investigations plan, if applicable.
- 5.47 In some cases, it may be possible to investigate the alleged conduct in parallel with another investigation, for example if the Local Government Ombudsman is investigating a Council decision and the Investigator is investigating the conduct of a Member involved in that decision. If this is the case, the Investigator will need to work closely with the other organisation and agree the steps that each party will take. The Investigator must inform the Senior Corporate Governance Officer of any such agreement.
- 5.48 When a decision is taken by the Monitoring Officer to defer an investigation, the Investigator must inform (in writing):
- The subject Member
  - The complainant
  - The Standards Committee
  - The relevant Parish or Town Council if applicable
  - The Head of Governance Services

- 5.49 The Investigator should ask the police, other relevant organisation or individual in writing to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. The Investigator must make a note of any important dates in the investigation plan review.
- 5.50 The deferred investigation should be kept under regular review and the Investigator should communicate with the Monitoring Officer on a regular basis in order to consider the reasonableness of continued deferral. Once a decision is taken to restart the investigation, the Investigator must notify the same parties in writing.
- 5.51 The Investigator should also update the investigations plan accordingly and communicate any changes to the Senior Corporate Governance Officer.

### **Confidentiality Issues**

- 5.52 Section 63 of the Local Government Act 2000 (as amended) limits the circumstances where information obtained by an Ethical Standards Officer (ESO) or a Monitoring Officer during an investigation can be disclosed. Any person who discloses information in breach of this section is guilty of a criminal offence.
- 5.53 The Investigator should not disclose information obtained in an investigation unless:
- The disclosure will assist an ESO to perform their statutory functions;
  - The disclosure will assist the Monitoring Officer<sup>8</sup> or Standards Committee to perform their statutory functions;
  - The person who the information relates to gives permission to disclose it;
  - The information has already lawfully been made public;
  - The disclosure is made for the purposes of criminal proceedings in the UK;
  - The Investigator is required to do so by a court or other similar body; or
  - The disclosure is to one of the public bodies listed in Section 63(1) of the Local Government Act 2000 for the purpose of their functions.
- 5.54 The Investigator should take the following practical steps to ensure that the integrity of the investigation is preserved:
- Mark all written communications<sup>9</sup>, transcripts and reports as confidential.
  - Outline the legal restrictions on the disclosure of information in all letters that are sent in relation to the investigation. The subject Member should be clearly informed in writing that they can appoint a solicitor, or other person, to act as their representative. The Investigator should also clearly

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<sup>8</sup> For the purposes of the investigation, the Investigator is carrying out the Monitoring Officer's statutory functions, and therefore the Investigator may disclose such information if it will assist with the investigation.

<sup>9</sup> Emails should be marked as "confidential" both in the heading of the email as well as in the delivery options.



inform them that they can disclose any relevant document to this representative.

- The Investigator should state that their representative should not be someone who may be involved in the investigation.
- The Investigator should advise all parties that they should make any approach to witnesses in writing in order to avoid confusion about the investigative process.
- When arranging interviews the Investigator should ask interviewees to identify the name of any person who is accompanying them to the interview, and ask them to state what their relationship is to the interviewee. The Investigator should explicitly state, in writing, that they should not be accompanied by anyone who may be called as a witness in the investigation.
- If the Investigator believes that the witnesses may discuss their testimonies with each other, they should not send the transcripts of any interviews until all of the interviews have been conducted. For example, the transcripts could be sent out at the same time that the draft report is sent to the parties.
- When the Investigator is interviewing a number of people who have close relationships with one another, it may be prudent to interview them immediately after each other, thereby reducing the opportunity for collaboration. The Investigator may need to amend to pre-interview letter in such cases to reduce the details regarding the interview subject, and if there is potential for collusion this should be highlighted in the report to the Assessment Sub-Committee and appropriate conclusions as to the facts or breaches of the Code reached.

5.55 If the Investigator believes that confidentiality may have been breached they should write to the party reminding them of the confidentiality requirements and, if they are a Council Member, of their duties under the Code of Conduct. If the Investigator has evidence that information was disclosed to a party prior to their interview, they can take this into account when evaluating the reliability of the witness's evidence.

5.56 If the Investigator believes that a disclosure has been made by a Council Member, they should contact the Monitoring Officer for advice as to whether a formal complaint should be made about their conduct. If the disclosure was substantial the Investigator should contact the Monitoring Officer regarding the possibility of referring the matter to the police.

# Investigation plan review sheet

Case No:

Date:	Investigator:
Authority:	

Target Reason for review (tick box)

<input type="checkbox"/>	New allegation
<input type="checkbox"/>	Additional information/witnesses
<input type="checkbox"/>	Periodic review (Investigation plans should be reviewed periodically)

Details relating to above

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Review of targets

Revised draft report target:	
Revised dispatch of final report date:	

Reason for revisions:

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**Approved by:** Head of Governance Services

**Signed:**

**Date:**

**PRIVATE AND CONFIDENTIAL**

Dear [insert name]

**Ref: 12345X**

I write further to [insert name]'s letter of [insert date] and [insert complainant name]'s allegation that you have or may have failed to comply with [insert authority name]'s Code of Conduct.

I have been appointed by Nicolé Jackson, Monitoring Officer of Leeds City Council, to investigate the allegations which have been made about your conduct. I would like to assure you that although the Standards Committee: Assessment Sub-Committee has referred the allegation for investigation, the Committee has formed no view on the matters set out in the allegation. The investigation will enable the Standards Committee to reach a conclusion on whether there has been any failure to comply with [insert authority name]'s Code of Conduct. Part of the investigation will include seeking information and documentation from you and other people, where relevant.

[I enclose a copy of the documents which make up the allegation made against you. Sections of text that contain personal data have been removed in accordance with the provisions of the Data Protection Act 1998. Information that is irrelevant to the allegation has also been removed. You may disclose these documents to your solicitor or other representative, should you choose to appoint one, for the purposes of seeking advice in relation to this investigation. The documents should not be disclosed to anyone else.]

Please provide the following information in writing by [insert date], in order that I can progress the investigation:

- [insert required information]
- [insert required information]
- [insert required information]

You are welcome to provide me with your initial response to the allegation should you wish to do so at this point.

I hope to complete the investigation within [insert time period as agreed in the investigations plan]. In order to assist in the progress of the investigation could you please let me know of any periods of time, such as holidays, when you will not be available?

I want to keep you informed of the progress of the investigation. However, I am aware that some people would prefer to be contacted only when there are substantive developments, while others will want to be updated more regularly. If you would prefer to be updated on progress at monthly intervals please contact me to confirm this and I will endeavour to accommodate your wishes.

If you have any queries I can be contacted directly on [insert contact number] or by e-mailing [insert email address]. Please quote the reference number on all correspondence.

Yours sincerely,

[insert investigator name]

**PRIVATE AND CONFIDENTIAL**

Dear [insert name]

**Ref: 12345X**

Following our conversation on [insert date] I am writing to confirm our [interview/telephone interview] arrangements for [insert date, time and location] and to give you some additional information.

The interview will be conducted under the powers given to me under the Local Government Act 2000.

I will be taking notes and may be recording our conversation. If I wish to record the interview I will ask you to give your consent beforehand. If I rely on information gained during this interview in a report, I will send you a copy of the record and give you an opportunity to comment on it. If I do not send you a copy of the interview record, you may request it. It is possible that what you say at interview may be disclosed and you might be called as a witness.

Please inform me in advance if you will be accompanied and if so by whom. You may have a friend or adviser with you during the interview. However, the person who accompanies you should not be a member of the Leeds City Council Standards Committee, a Council officer or a potential witness.

I estimate that the interview will take approximately [insert time].

I enclose the following documents that may be required during the interview:

[insert required document]  
[insert required document]  
[insert required document]

It is important that you have copies of these documents with you, as they may be needed during the interview. It is also important that you have copies of any other relevant documents with you, as they may be needed during the interview.

When the investigation is finished, I will report to the Standards Committee. The Standards Committee will decide whether there has been a breach of the Code and what action should be taken including whether to refer the matter to the Adjudication Panel for England.

[Before I complete this investigation, you will be sent a draft of the investigation report to enable you to make any representations you consider necessary. Having considered these, I will then issue my final report.]

I must also ask that you treat any information provided to you during the course of this investigation as confidential. In addition, there are statutory restrictions on the disclosure of information obtained by the Monitoring Officer. This is covered by Section 63 of the Local Government Act 2000 and disclosure of information contrary to this is a criminal offence. Anyone who accompanies you to your interview should also be made aware of the restrictions on disclosure of information.

If you have any queries prior to the interview, please do not hesitate to contact me on [insert contact number] or by sending an email to [insert email address].

Yours sincerely

[insert investigator name]

# Interview plan

Case No:

<b>Interviewee:</b>	
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<b>Ref No:</b>			
<b>Subject member:</b>		<b>Interviewer:</b>	
<b>Authority:</b>		<b>Date:</b>	

<b>Nature of complaint (optional)</b>

<b>Purpose of interview</b>

<b>Facts already established (which relate to purpose of interview)</b>



**Facts to be established** (which relate to purpose of interview)

--

**Record of disclosure to witness before interview**

--

**Planned disclosure to witness during interview**

--

Areas to be covered in interview	Key questions

# Interview Preamble

## Unrecorded Interviews

My name is [insert name] and I am an investigator for the Monitoring Officer of Leeds City Council.

As I advised you [on the telephone/by letter] I will be taking notes, and I am not recording this interview.

The Monitoring Officer responsible for this investigation has asked me to help [him/her] with case number [insert number] about allegations of the conduct of [insert subject member name].

I am conducting this interview under the powers given to the Monitoring Officer by the Local Government Act 2000 and The Standards Committee (England) Regulations 2008.

Prior to the completion of the investigation, [insert subject member name] and [insert complainant name] will be sent a draft of the report to enable them to make any representations they consider necessary. As a witness you may be sent relevant extracts from the draft report for the same purpose. Having considered comments on the draft report, I will then issue my final report. Parts of the notes of this interview may be included in the draft and final report.

If the matter is considered at a hearing, notes of this interview may be submitted as evidence and you might be called as a witness. If you provide us with information of a sensitive or private nature, I will ask the Adjudication Panel for England or the Standards Committee to keep this information confidential. This is, however, their decision and they may disagree with my recommendation and allow the information you have provided to be made public.

Please treat any information provided to you during the course of this investigation as confidential. In addition, there are statutory restrictions on the disclosure of information obtained during an investigation. This is covered by Section 63 of the Local Government Act 2000 and disclosure of information contrary to this is a criminal offence.

## Do you have any questions about what I've said?

If at any stage you feel you would like a break please say so, and we will adjourn the interview for a short period. Do you have a fixed end time (such as to collect children from school)?

The interview should take approximately [insert time], however this may change. I will offer you a break around every hour and I may decide to take a break to assist me in my role, even if you do not feel you need one.

## Recorded Interviews

[Switch on the tape recorder before beginning preamble]

My name is [insert name] and I am an investigator for the Monitoring Officer of Leeds City Council.

As I advised you [on the telephone/by letter] I will be recording this interview. Could you confirm for the record that you consent to this?

For the benefit of the tape it is [insert time & date]. The Monitoring Officer responsible for this investigation has asked me to assist her in this matter.

For the record this is an interview with [insert name of interviewee] about case number [insert case number] regarding allegations about the conduct of [insert subject member name].

I am conducting this interview under the powers given to the Monitoring Officer by the Local Government Act 2000 and The Standards Committee (England) Regulations 2008.

Before the investigation is completed, [insert subject member name] and [insert complainant name] will be sent a draft of the report to enable them to make any representations they consider necessary. As a witness you may be sent relevant extracts from the draft report for the same purpose. Having considered comments on the draft report, I will then issue my final report. Parts of the transcript of this interview may be included in the draft and final report.

If the case is considered at a hearing, parts of the transcript of this interview may be submitted as evidence and you may be called as a witness. If you provide me with information of a sensitive or private nature, I will ask the Adjudication Panel for England or the standards committee to keep this information confidential. This is however, their decision and they may disagree with my recommendation and allow the information you have provided to be made public.

Please treat any information provided to you during the course of this investigation as confidential. In addition, there are statutory restrictions on the disclosure of information obtained during an investigation. This is covered by Section 63 of the Local Government Act 2000 and disclosure of information contrary to this is a criminal offence.

### **Do you have any questions about what I've said?**

If at any stage you feel you would like a break please say so, and we will adjourn the interview for a short period.

[For telephone interviews, ask whether the interviewee can talk freely, somewhere where there are no interruptions and the conversation cannot be overheard].

Is there anything else you would like me to explain, either procedural or otherwise?

The interview should take approximately [insert time], however this may change. I will offer you a break around every hour and I may decide to take a break to assist me in my role, even if you do not feel you need one.

**PRIVATE AND CONFIDENTIAL**

Dear [insert name]

**Ref: 12345X**

I write further to our [interview/telephone interview] of [insert date] and enclose [as agreed] two copies of the record/transcript taken from the interview.

**Record:**

I would be grateful if you could review the record and make any alterations you consider necessary from your recollection of the interview. Please then sign and date the declaration at the end of the interview record and initial the bottom of each page, returning one copy to me to the above address by [insert date]. Should you not sign and return a copy of the interview record by this date I will assume that you accept and agree with its content.

**Transcript:**

I would be grateful if you could review the transcript and make any alterations if you think there are any errors with the transcript. Please then sign and date the declaration at the end of the interview transcript and return one copy to me to the above address by [insert date]. If I do not hear from you by that date I will assume you accept the transcript as an accurate record of the interview.

The copy of the interview record/transcript has been provided to you solely to enable you to confirm the accuracy of the interview. It should not be disclosed or used for any other purpose. You are, however, able to disclose these documents to your solicitor, should you choose to appoint one, or other representative, for the purpose of seeking advice in relation to this investigation.

If, on reading the interview record/transcript, you have any additional comments that you feel are relevant to the investigation, please address these to me in writing in a separate document and send it to the above address, or by sending an email to [insert email address]. Alternatively you can telephone me directly [insert contact number]. Should you wish to write would you please quote the reference number on all documentation.

Yours sincerely

[insert investigator name]

## **Section 6 – Production of investigation reports**

### **Producing draft investigation reports**

6.1 The Investigator will be required to produce a report (Appendix 1 is the report template) at the conclusion of the investigation which should provide the following details:

#### **6.1.1 Title page**

- Who the report is for
- Who the report is by
- The date of the report

#### **6.1.2 Executive summary**

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

#### **6.1.3 The subject Member's details**

- When the Member was elected
- The Member's term of office
- Any other relevant authorities they are a member of
- Details of any committees on which the Member serves or has served
- The date a Member ceased to be a Member (if relevant)
- The date the Member signed an undertaking to abide by the Code
- Full details of any training the Member has received on the Code

#### **6.1.4 Relevant legislation and protocols**

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

#### **6.1.5 Evidence gathered and the investigator's consideration of it**

- A summary of who information was obtained from
- A chronological outline of the facts that have been established (undisputed facts should be set out as facts and stated accordingly)
- An outline of the disputed facts, including the different views, the Investigator's conclusions on them based on the balance of probabilities and the reasons for those conclusions
- All the relevant evidence gathered even if it does not support the Investigator's conclusions
- Any mitigating or aggravating factors, such as a the state of mind of those involved
- When referring in the report to material in the evidence bundle, identify the document referred to

**6.1.6 Summary of the material facts<sup>10</sup>**

- A summary of the facts needed to confirm the conclusions you have reached
- Where there was a disputed fact, the Investigator only need include the conclusion they came to

**6.1.7 The subject Member's additional submissions**

- An outline of the information or opinions submitted by the subject Member, which the Investigator did not consider relevant to the case
- An outline of why the Investigator did not deem the information or opinions submitted by the subject Member to be relevant

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

- Where possible, take each alleged breach in turn
- Outline which part of the Code of Conduct the Investigator is considering. Explain the test being applied when determining if there has been a failure to comply with the Code.
- Explain in detail, giving reasons, why the Investigator does or does not consider that the conduct constitutes a breach of the Code
- Do not introduce any new facts or opinions. The Investigator must only refer to evidence or opinions that have been outlined earlier in the report
- Make sure that the explanation of the test being applied, and the reasons for the conclusions, are detailed and clear enough to understand for a lay person with no legal background

**6.1.9 Finding**

- Outline the statutory finding of the investigation, and provide reasons for the decision
- Refer to aggravating or mitigating factors, which must be outlined in the facts section earlier in the report
- The Investigator may also add any other observations and/or recommendations they consider necessary

**6.1.10 Schedule**

- List the exhibits with the title "Schedule of evidence taken into account" (Appendix 2 is the schedule of evidence template)
- Exhibit all the evidence upon which the Investigator has relied when reaching their conclusion
- In complex cases it may be appropriate to provide a chronology of important events in the case which should appear at the end of the report
- Provide a list of unused material

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<sup>10</sup> The Investigator may decide that this section is not required where there is no dispute as to the findings of fact and no requirement for the Investigator to reach conclusions on those facts.

## Issuing the draft report

- 6.2 The Investigator must issue a draft report, sending a copy to the Monitoring Officer, Head of Governance Services and Senior Corporate Governance Officer initially. The Monitoring Officer reserves the right to decide when the investigation is fully complete, and when the report is of an acceptable quality to be put before the Standards Committee. If the Monitoring Officer agrees that the investigation is complete, both the Monitoring Officer and the Head of Governance Services will provide comments on the draft investigation report.
- 6.3 Once these comments have been addressed by the Investigator, they must send a copy of the draft report to the subject Member and the complainant, inviting their comments by a specified date. This is helpful if the report is complex or the conclusions are likely to be disputed by either party. The draft should not be sent to other witnesses or parties interviewed, but confirmation of their evidence should be sought following their interview (as explained in paragraphs 5.30 and 5.31).
- 6.4 The draft report should be clearly marked as 'draft' and must state that it is subject to change and does not represent the Investigator's final conclusion. Whether the Investigator has or has not found the subject Member to be in breach of the Code of Conduct, copies of the evidence that were relied upon when reaching their conclusion should also be included. The Investigator should keep a copy of the draft and the bundle of evidence that they send to the subject Member. This acts as a record of what information the subject Member has received and prevents duplication of work when issuing the final bundle. No such evidence should be provided to the complainant.
- 6.5 The Investigator must consider whether any of the information in the draft report, or evidence bundle, is confidential information that should not go into the public domain. For example, medical details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.
- 6.6 The Investigator should enclose an accompanying letter stating the following:
- The report is confidential in accordance with Section 63 of the Local Government Act 2000
  - The report can be discussed with a legal representative
  - The date by which comments must be received

Appendix 3 is the draft report covering letter to be used for this purpose.

- 6.7 Responses to the draft report may reveal the need for further investigation, or they may add nothing of relevance. If there are significant changes to the report, the Investigator may wish to consider issuing a second draft. Any such draft should be sent to the Monitoring Officer, Head of Governance Services and Senior Corporate Governance Officer for comment prior to being sent to the parties. Once the Investigator has considered whether the responses add anything of substance to the investigation, they will be able to make their final conclusions and recommendations.



6.8 Where comments on the draft report are critical of the investigation or the Investigator, they may need to consider how to respond to the comments made. The Investigator should not let such criticism prevent a draft report being finalised unless this is unavoidable. In particular, the investigation process, including writing the report, **should not be suspended** while a complaint about the investigation is dealt with. The only exemption to this is if a service complaint<sup>11</sup> is so substantive that it would not be appropriate for the same Investigator to continue on the case while the service complaint is ongoing. In these cases the investigation will be referred back the Monitoring Officer whilst the complaint is resolved. Further guidance on how the Investigator should respond to service complaints is contained in Section 4 of this procedure (Monitoring the investigation).

6.9 When commenting on a draft report, a party may disagree with:

- The interpretation of the Code or other legislation
- The analysis of the evidence
- The analysis of an individual's conduct
- Conclusions reached in an investigation
- The scope of the investigation
- How and who evidence was obtained from

The Investigator should avoid getting drawn into lengthy correspondence with the subject Member or other interested parties if they criticise the Investigator for reaching certain conclusions.

6.10 If the subject Member provides comments to the Investigator before the draft report has been issued, the Investigator should respond in writing. If the subject Member does not understand the Code of Conduct or the investigative process, the Investigator should seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing, and the Investigator will need to show that they took all reasonable steps to address the subject Members' confusion.

6.11 If the comments are made by the complainant, the Investigator can either respond to their comments or ask them to wait until they have read the draft report.

6.12 In relation to comments received after the draft report has been issued, the Investigator should keep a written record of their consideration of these comments. The Investigator should provide a written response to the party explaining their position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report. The Investigator should also add any critical comments on the draft report to the bundle of evidence.

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<sup>11</sup> A complaint about the conduct of an investigation, as oppose to a complaint about the interpretation and reasoning in the Investigator's report.

### **Issuing the final report**

- 6.13 Once the Investigator has completed the investigation they will:
- Make a finding that there has been a failure to comply with the Members' Code of Conduct ("a finding of failure") or there has not been a failure to comply with the Members' Code of Conduct ("a finding of no failure"); and
  - Prepare a written report of the investigation ("the Final Report") which contains their findings.
- 6.14 The final report will contain the same information as the draft report (outlined in paragraph 6.1 of this procedure), but will contain a "final" marking.
- 6.15 The Investigator must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain. For example, medical details or signatures. All information of this nature should be edited from the final report unless it is essential for the reasoning. This is especially important given that once the final report is presented to the Standards Committee for consideration it becomes exempt information in accordance with Regulation 8(6) of the Standards Committee (England) Regulations 2008, and may therefore be considered in public by the Standards Committee and published accordingly.
- 6.16 Once the final report is completed, the Investigator must send a copy of the report (enclosing a copy of the Standards Committee Procedure Rules for the subject Member) to:
- The subject Member;
  - The Monitoring Officer; and
  - The Senior Corporate Governance Officer.
- 6.17 The Investigator should also include a covering letter to the subject Member which states that some aspects of the report are confidential, that they have considered any comments they made in response to the draft report and have amended the final report where appropriate, and that it can be discussed with a legal representative. Appendix 4 to this procedure is the final report covering letter template.

### **Producing and referencing the evidence bundle**

- 6.18 The Investigator must produce an evidence bundle which contains the evidence used, which will need to be submitted to the Standards Committee or Adjudication Panel Case Tribunal (as appropriate), and a schedule of unused evidence. The documents referred to in the schedule may be requested by the Standards Committee or subject Member.
- 6.19 The evidence bundle will need to include:
- a) Documents which establish the legal framework for the investigation such as the complaint letter, a copy of the Code of Conduct (along with a copy of the minute confirming the Code's adoption and any subsequent amendments to the Code), a copy of any legislation referenced in the final

report, and a copy of the subject Members' declaration of acceptance of office.

- b) Any document relied upon by the Investigator when making their decision, such as transcripts, interview records or interview statements with all the relevant parties and interviewees; written correspondence from the subject Member including comments on the draft report; minutes, reports and other documentary evidence upon which they have relied when reaching their conclusion on the facts.
- c) Any document which would assist in the subject Member's defence such as any document that the subject Member may seek to rely on in their defence of the conclusions reached; documents which contain information that is inconsistent with the facts as established by the investigation; documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses; documents containing information which could lead to a finding that the Standards Committee or Investigator has acted in breach of the subject Member's rights under the Human Rights Act 1998; and documents which provide an explanation or partial explanation of the subject Member's actions.
- d) Background documents which the Investigator relied upon when reaching their decision but which may be helpful to the Standards Committee when considering the case. The Investigator should also include documents which the subject Member thinks are relevant but which are not, in the Investigator's opinion, material to the case.
- e) A list of unused evidence, which is a list of the documents the Investigator believes are irrelevant to the investigation. The Investigator should provide sufficient information about each document so that the subject Member or Standards Committee can request a copy if they wish. The Investigator does not need to prepare a bundle of the unused evidence.

6.20 Where the following information is material to the case, the Investigator should discuss with the Monitoring Officer whether such material should be included in the evidence bundle<sup>12</sup>:

- Sensitive information which has been edited or deleted.
- Information protected by legal professional privilege and public interest immunity.

6.21 Internal documents, such as file notes and draft reports, should not be included in the evidence bundle. The Investigator should ensure that they exercise proper version control in relation to any draft reports and should ensure that any other notes are precise and clear. Instead these documents should be referenced in the schedule of unused evidence, and therefore may be requested by the Standards Committee.

6.22 The Investigator **must** ensure that they disclose all documents which may be relevant to the case or to the subject Member's defence. This is because failure to disclose such documents may result in the Standards Committee

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<sup>12</sup> Particularly as such information may be necessary for the subject Member to prepare a proper defence.

reaching an inappropriate decision, and the decision being deemed unsafe upon appeal to the Adjudication Panel's Appeals Tribunal.

- 6.23 The evidence bundle should be structured as follows:
- The documents which establish the legal framework for the investigation;
  - The remaining evidence grouped thematically, for example policy documents or minutes;
  - Documents should be arranged chronologically within their group;
  - The front page should be numbered 000001 which each subsequent page numbered in ascending order;
  - If a document is missing, the investigator should provide a note to this effect to the Standards Committee outlining the reasons why the document is unavailable; and
  - Multiple versions of a document should only be included if it is important to do so for the evidence.
- 6.24 The Investigator should consider what information needs to be deleted from the evidence bundle on a case by case basis. Information should be deleted on the basis that it may end up in the public domain. The Investigator should consider removing the following types of information:
- Telephone numbers, addresses, email addresses or signatures of any person other than on a transcript or witness statement. This is personal data as defined by the Data Protection Act 1998. If the Standards Committee require such details, these should still be deleted from any documents and provided as a separate list to the Standards Committee instead.
  - Age and date of birth of a party (unless directly relevant to the case).
  - Any information which relates to matters which were not referred for investigation.
  - Other personal data as defined by the Data Protection Act 1998.
  - Items such as petitions, legal advice and the evidence of vulnerable people need to be deleted on a case-by-case basis.

### **Confidentiality Issues**

- 6.25 Section 63 of the Local Government Act 2000 (as amended) limits the circumstances where information obtained by an Ethical Standards Officer (ESO) or a Monitoring Officer during an investigation can be disclosed. Any person who discloses information in breach of this section is guilty of a criminal offence.
- 6.26 The Investigator should not disclose information obtained in an investigation unless:
- The disclosure will assist an ESO to perform their statutory functions;
  - The disclosure will assist the Monitoring Officer<sup>13</sup> or Standards Committee to perform their statutory functions;

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<sup>13</sup> For the purposes of the investigation, the Investigator is carrying out the Monitoring Officer's statutory functions, and therefore the Investigator may disclose such information if it will assist with the investigation.

Procedure for external Code of Conduct investigations  
Section 6 – Production of investigation reports

- The person who the information relates to gives you permission to disclose it;
- The information has already lawfully been made public;
- The disclosure is made for the purposes of criminal proceedings in the UK;
- The Investigator is required to do so by a court or other similar body; or
- The disclosure is to one of the public bodies listed in Section 63(1) of the Local Government Act 2000 for the purpose of their functions.

6.27 The Investigator should therefore mark all written communications<sup>14</sup>, transcripts and reports as confidential.

6.28 However once the final report has been forwarded by the Monitoring Officer to the Standards Committee for consideration (in accordance with Regulation 17 of the Standards Committee (England) Regulations 2008), the final report is considered as exempt information under paragraph 7C of Schedule 12A of the Local Government Act 1972, and is therefore subject to the public interest test.

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<sup>14</sup> Emails should be marked as “confidential” both in the heading of the email as well as in the delivery options.

**PRIVATE AND CONFIDENTIAL**

**Case Reference: 1234X**

Report of an investigation under Section 59 of the Local Government Act 2000 by [insert investigator name] appointed by the Monitoring Officer for Leeds City Council into an allegation concerning [insert subject member name].

**DATE: [insert date]**

## Contents

- 1 Executive summary
  - 2 **[Insert member's name]'s official details**
  - 3 The relevant legislation and protocols
  - 4 The evidence gathered
  - 5 Summary of the material facts
  - 6 **[Insert member's name]'s additional submissions**
  - 7 Reasoning as to whether there have been failures to comply with the Code of Conduct
  - 8 Finding
- 
- Appendix A            Schedule of evidence taken into account and list of unused material
- 
- Appendix B            Chronology of events

## 1 Executive summary

1.1 [Insert summary of allegation]

1.2 [Insert summary of Investigation outcome]

## 2 [Insert member's name]'s official details

2.1 [Insert member's name] was elected to office on [insert date] for a term of [insert number] years. [insert member's name] is also a member of the following other relevant authorities: insert authority names].

2.2 [Insert member's name] currently serves on the following committees: [insert committee names] and has also served on [insert committee names] committees in recent years.

2.3 [If no longer a member, state how the period of office ceased]

2.4 [Insert member's name] gave a written undertaking to observe the Code of Conduct on [insert date].

2.5 [Insert member's name] has received the following training on the Code of Conduct [insert training details].

## 3 The relevant legislation and protocols

3.1 At a meeting on [insert relevant date], the Assessment / Review Sub-Committee of the Standards Committee of Leeds City Council decided to refer the allegation against Councillor [insert subject Member's name] to the Monitoring Officer for investigation under Section 57A(2) of the Local Government Act 2000.

3.2 An investigation carried out by the Monitoring Officer following referral under Section 57A(2) is governed by Section 66 of the Local Government Act 2000. Under Section 66, the Secretary of State may make regulations as to the way in which any matters referred to the Monitoring Officer are to be dealt with. Regulations made by the Secretary of State under this section are the Standards Committee (England) Regulations 2008 (SI 1085). These Regulations apply to this investigation.

3.3 Section 82A of the Local Government Act 2000 enables a Monitoring Officer to delegate any part of his or her functions in relation to an investigation to any nominated person. In this case, I have been appointed under Section 82A to investigate the allegation and prepare a report of my investigation.

3.4 Leeds City Council has adopted a Code of Conduct in which the following paragraph[s] is/are included:

[insert included paragraph]



[insert included paragraph]  
[insert included paragraph]  
[insert included paragraph]

#### **4 The evidence gathered**

4.1 I have taken account of oral evidence from [insert evidence details]

4.2 I have also taken account of documentary evidence obtained from [insert evidence details]

#### **5 Summary of the material facts**

5.1 [Insert summary]

#### **6 [Insert member's name]'s additional submissions**

6.1 [Insert submissions]

#### **7 Reasoning as to whether there have been failures to comply with the Code of Conduct**

7.1 [Insert reasoning]

#### **8 Finding**

8.1 [Insert finding]

# Appendix A

[When printed, insert a copy of the **schedule of evidence** here.]

# Appendix B

## Chronology of events

[insert event]  
[insert event]  
[insert event]  
[insert event]  
[insert event]

# Appendix A

## Schedule of evidence taken into account

Case No:

### Core documents

Doc No	Description	Pages
XX123	Allegation letter	1-13

### Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages

### Minutes of meetings and other documentary evidence

Doc No	Description	Pages

### [insert subject member name]'s comments on draft report

Doc No	Description	Pages

## List of unused materials


**PRIVATE AND CONFIDENTIAL**

Dear [insert name]

**Ref: 12345X**

I write further to enquiries that have been made into [insert complainant's name]'s allegation, that you may have failed to comply with [insert authority name]'s Code of Conduct, which was referred to me for investigation.

I am writing to you and to [insert complainant's name] to let you know my draft finding[s] and the reasons why I have reached [it/them].

If you choose to make comments on the draft report, it would be most constructive to focus only on matters that I have relied upon to reach my findings.

Please note that the disclosure of information from parts of the report [and some of the documents in the schedule of evidence] may be an offence under Section 63 of the Local Government Act 2000.

Section 63 prohibits the disclosure of information gathered during an investigation. However, information can be disclosed to your solicitor or other adviser and in any of the following circumstances:

- The disclosure will enable the Standards Committee, an Ethical Standards Officer, the Ombudsman, the Audit Commission (and Welsh equivalent), the Electoral Commission or the Adjudication Panel for England to perform their statutory functions.
- The disclosure will assist the Monitoring Officer to perform their statutory functions.
- You have permission from the person to whom the information relates to disclose it.
- The information has already lawfully been made public.
- The disclosure is made for the purposes of criminal proceedings in the UK.
- You are required to do so by a court or similar body.

You may wish to seek your own advice if you are unsure if you can legally disclose information from the report. Additionally, this is a draft report and does not necessarily contain my final findings.

If you wish to comment on the draft report and findings, please let me have your comments in writing to the above address or fax number by 12 noon on [insert date]

10 working days from date of letter]. If I have not heard from you by that date, I shall proceed to issue the final report.

Should you require any clarification on the points raised in this letter, please contact me on [insert telephone number] or send an email to [insert email address].

Yours sincerely

[insert investigator name]

**PRIVATE AND CONFIDENTIAL**

Dear [insert name]

**Ref: 12345X**

I refer to my letter dated [insert date] and advise that the investigation into the allegation made against you by [insert complainant's name] has now been completed.

[Before finalising my report, I considered carefully any comments received in response to the draft report, including those in your letter of [insert date]. I have amended the report, where I have considered it appropriate to do so.]

I enclose a copy of my final report. The report is marked 'confidential'. While my finding may be disclosed, please note that the disclosure of information from parts of the report may be an offence under Section 63 of the Local Government Act 2000.

Section 63 prohibits the disclosure of information gathered during an investigation. However, information can be disclosed to your solicitor or other adviser and in any of the following circumstances:

- The disclosure will enable the Standards Committee, an Ethical Standards Officer, the Ombudsman, the Audit Commission (and Welsh equivalent), the Electoral Commission or the Adjudication Panel for England to perform their statutory functions.
- The disclosure will assist the Monitoring Officer to perform her statutory functions.
- You have permission from the person to whom the information relates to disclose it.
- The information has already lawfully been made public.
- The disclosure is made for the purposes of criminal proceedings in the UK.
- You are required to do so by a court or similar body.

You may wish to seek your own advice if you are unsure if you can legally disclose information from the report.

[Insert any appropriate information about publication of summary of report by Leeds City Council and its availability]. A copy of this summary will be forwarded in due course and may be disclosed.



I am required by the Act to inform [insert complainant's name] of the outcome of the investigation and am therefore sending them a copy of my report. [I am also informing the clerk of my finding[s].]

Yours sincerely

[insert investigator name]

## **Section 7 – Presentation of the final report to the Standards Committee**

### **Consideration of final investigation reports**

- 7.1 In Leeds, the Assessment Sub-Committee of the Standards Committees receives and considers final investigation reports in accordance with Regulation 17 of the Standards Committee (England) Regulations 2008. The Assessment Sub-Committee has monthly scheduled meetings, to which the final investigation report will be added.
- 7.2 The Investigator will be expected to attend in order to present their findings and answer any questions about the final report. The Monitoring Officer will act as the legal advisor to the Sub-Committee at this meeting, as agreed within the scope of the delegation. As soon as the date of the Assessment Sub-Committee is known the Senior Corporate Governance Officer will contact the Investigator to invite them to attend.

### **Hearings conducted by the Hearings Sub-Committee**

- 7.3 Should the Assessment Sub-Committee decide to refer the matter to a hearing by the Hearings Sub-Committee, the Investigator will be expected to take part in the pre-hearing process and the hearing itself according to the provisions of the Standards Committee Procedure Rules (contained in Part 4 of the Constitution of Leeds City Council).
- 7.4 During the pre-hearing process the Investigator will be required to complete an information form within a set timescale decided on a case by case basis (a minimum of ten days), which will ask the Investigator to confirm whether:
- They wish to be represented at the hearing;
  - They want to call relevant witnesses to give evidence to the Hearings Sub-Committee;
  - They want any part of the hearing to be held in private or want any part of the report of documents to be withheld from the public.
- 7.5 The Investigator will also be sent a copy of the subject Member's response to the pre-hearing process which will outline any areas of disagreement with the Investigator's final report, as well as whether they will be represented, whether they wish to call witnesses, and whether they will be giving evidence to the Sub-Committee.
- 7.6 The Investigator will be expected to attend the meeting of the Hearings Sub-Committee itself and will be sent a copy of the pre-hearing process summary, which will confirm the time and date of the hearing and the number of witnesses to be called, at least ten days before the hearing. The hearing will be held within three months of the final investigation report being issued by the Investigator.

- 7.7 Should the Investigator fail to attend the hearing, the Hearings Sub-Committee will consider whether there is sufficient reason for the failure. The Hearings Sub-Committee will consider any representations made in writing before making a determination in the Investigator's absence. If the Hearings Sub-Committee does not consider that there is sufficient reason for the Investigator not attending, it will consider the complaint and make a determination in the Investigator's absence. If the Hearings Sub-Committee does consider there is sufficient reason, it may adjourn the hearing to another date.
- 7.8 The Investigator may be asked to make representations and answer questions throughout the different stages of the hearing. The Investigator may also call witnesses to support their findings of fact within the final report, if necessary.

### **Case Tribunals and Appeals Tribunals conducted by the Adjudication Panel for England**

- 7.9 Should the Assessment Sub-Committee refer the matter to the President of the Adjudication Panel for England, the case will be heard by a Case Tribunal.
- 7.10 The Adjudication Panel for England publish a procedure called "Case Tribunal Procedures for matters referred from a Standards Committee", which explains what is expected of the Investigator throughout the process. This procedure can be found at <http://www.adjudicationpanel.tribunals.gov.uk/formsguidance.htm>
- 7.11 Following a hearing conducted by the Hearings Sub-Committee of Leeds City Council, the subject Member may appeal against the finding or the sanction imposed by the Hearings Sub-Committee. Any such appeal will be made to the President of the Adjudication Panel. If the President decides to allow such an appeal, the Appeals Tribunal must convene to consider the matter. The Adjudication Panel for England publish a procedure called "Appeals Tribunal Procedure" which can be found at <http://www.adjudicationpanel.tribunals.gov.uk/formsguidance.htm>
- 7.12 There is no specific provision for the Investigator to be involved in an Appeals Tribunal, however the Monitoring Officer may contact the Investigator for assistance in preparing for an Appeals Tribunal. The costs of such assistance will have been agreed with the Head of Governance Services through the commissioning process.

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Originator: Kate Sadler

Tel: 3951711

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**Report of the Assistant Chief Executive (Corporate Governance)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Compulsory Training for Members of Standards Committee**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**Executive Summary**

1. The Standards Committee has a statutory responsibility for the assessment and review, consideration, hearing and determination of complaints against Members of Leeds City Council and Members of the Town and Parish Councils in the Leeds Area.
2. Following a recommendation of Corporate Governance and Audit Committee, Member Management Committee has been consulted in relation to the proposal that all Members of the Standards Committee should receive compulsory training in relation to the Members' Code of Conduct, Local Assessment of Complaints and the Hearing of Complaints, and the recommendation that Members of the Standards Committee should not be entitled to sit as Members of the Assessment, Review or Hearings Sub-Committees unless and until they have completed the training relevant to that Sub-Committee.
3. Standards Committee are invited to comment on the same proposals and recommendations, prior to their consideration by General Purposes Committee.

## **1.0 Purpose Of This Report**

- 1.1 This report proposes the introduction of compulsory training in relation to the local assessment regime for Members of the Standards Committee. The report recommends that Members of the Standards Committee should not sit as Members of the Assessment, Review or Hearings Sub-Committees unless and until they have completed the training relevant to the Sub-Committee in question.
- 1.2 Standards Committee are invited to discuss and comment on the proposals set out in this report. These comments, together with those received from Member Management Committee, will be placed before the General Purposes Committee together with the relevant amendments for inclusion within the Council's Constitution.

## **2.0 Background Information**

- 2.1 The Local Government Act 2000 requires that the Council appoints a Standards Committee, sets out the general and specific functions to be carried out by the Standards Committee and empowers the authority to arrange for the Standards Committee to exercise such other functions the authority considers appropriate.
- 2.2 In May 2008, responsibility for the initial assessment of Complaints against Members under the Members' Code of Conduct was transferred from the Standards Board for England (now known as Standards for England) to the Local Authorities. Regulation 6 of the Standards Committee (England) Regulations 2008 require the Standards Committee to appoint two separate Sub-Committees; one to deal with the assessment of complaints and the other to deal with the review of complaints.
- 2.3 Regulation 18 of the Standards Committee (England) Regulations requires that hearings are conducted having regard to any relevant guidance issued by the Standards Board. Guidance from Standards for England recommends that the Standards Committee appoints a Sub-Committee to hear and determine complaints.
- 2.4 In Leeds, the Standards Committee has three Sub-Committees; the Assessment Sub-Committee, the Review Sub-Committee and the Hearings Sub-Committee. Membership of those sub-committees is set out at paragraph 3.5 below.
- 2.5 At its meeting of 30<sup>th</sup> June 2009, the Corporate Governance and Audit Committee considered the annual report of the Standards Committee. As a result of that discussion, particularly with reference to the local assessment function of the Standards Committee, the Corporate Governance and Audit Committee resolved:-
- 8 (b) That General Purposes Committee, having consulted with the Standards Committee and Member Management Committee, be recommended to make Local Assessment training compulsory for members of the Standards Committee.
- 2.6 A report was placed before Member Management Committee on 13<sup>th</sup> October 2009 seeking its views with regard to compulsory training for Standards Committee members. A verbal update will be given to the meeting in this regard.

### **3.0 Main Issues**

#### The Training Plan

- 3.1 The Standards Committee has a training plan for its members which is updated on an annual basis. This plan, which was last updated in February 2009, seeks to meet the training and development needs of the Standards Committee Members, both when they are new to the Committee and throughout their time as members of the Committee.
- 3.2 The training plan identifies a number of separate learning targets which are relevant to the needs of the Committee's members as they undertake the various functions of the Standards Committee. These targets split into the two key areas of knowledge and skills as follows:-

#### Knowledge

- To ensure all members have an understanding of the Code of Conduct and various protocols governing member and officer relations,
- To ensure all members understand the Committee's relationship with external bodies/agencies,
- To ensure all members are aware of the role and function of the Monitoring Officer,
- To ensure all external members have the necessary awareness of Council business, the political context, and the role of a City Councillor,
- To ensure all members are aware of current issues for the Committee and the context of the Committee's work.

#### Skills

- To ensure all independent members have the necessary skills to chair meetings of the committee and its sub-committees,
  - To ensure all members have the necessary skills to carry out the initial assessment of local complaints,
  - To ensure all members have the necessary skills to carry out the consideration of final investigation reports,
  - To ensure all members have the necessary skills to conduct a local hearing.
- 3.3 The training plan attached at Appendix 1 to this schedule is a revised version of the training plan approved by the Standards Committee in February 2009. It specifies how the various learning targets set out above will be met.

#### Compulsory Training

- 3.4 In addition to its general functions, Members are aware that the Standards Committee is required to carry out the initial assessment of complaints against Members, the consideration of any final investigation reports in relation to those complaints, and the hearing and determination in relation to any findings of breach of the Members' Code of Conduct contained within those reports.

- 3.5 As required, the Standards Committee has appointed sub-committees which are responsible for the functions outlined at paragraph 3.4 above. The Assessment Sub-Committee and Review Sub-Committee each total four members comprising one Independent Member (the Chair), two Elected Members and one Parish Member. The Hearings Sub-Committee totals five members comprising two Independent members (one of whom shall be Chair), two Elected Members and one Parish Member. At the current time, all full Members of the Standards Committee are eligible to serve on its Sub-Committee. The reserve Independent Member of the Standards Committee is not eligible to serve on the sub-committees.
- 3.6 Given that all full Members of Standards Committee are eligible for appointment to its Sub-Committees, and as such may participate in the various functions surrounding complaints against Members, it is essential that they have both a thorough understanding of the Members' Code of Conduct and the necessary skills to perform those functions prior to appointment to those sub-committees. For this reason it is proposed that the items marked on the training plan attached at Appendix 1 should be made compulsory and that Standards Committee members should not be eligible for appointment to the Sub-Committees unless and until they have undertaken the training relevant to the Sub-Committee in question.

#### Changes to the Constitution

- 3.7 It is proposed that in order to enforce the above proposal an amendment should be made to paragraph 9.3.7 of Article 9 of the Constitution to state as follows:

Members of the Sub-Committees of the Standards Committee must complete all compulsory training and shall not sit as a Member of the following Sub-Committees unless such training has been undertaken in accordance with the Standards Committee Training Programme.

#### Current Members of the Standards Committee

- 3.8 Although the training specified above is not currently compulsory, it has been strongly supported by members of the Standards Committee. All but one of the Members of Standards Committee have attended the training offered to them which it is proposed should be compulsory.
- 3.9 Hearings training has been offered on two separate occasions; namely 16<sup>th</sup> February 2006 and 23<sup>rd</sup> July 2007. It is intended to offer this training again within the current municipal year in order that new members of the Standards Committee can attend and discussions are ongoing with a member of the Adjudication Panel for England with a view to him providing this training.
- 3.10 Pending Hearings Training taking place, there is only one of the Elected Members, two of the Independent Members and one of the Parish Members currently on Standards Committee who have completed the training in relation to hearings and who could therefore attend a Hearing as a Member of the Hearings Sub Committee in the event that the training were compulsory. The prescribed membership for the Hearings Sub Committee is five Members, comprising two Independent Members, one Parish Member and two Elected Members. The sub committee is however quorate with only 3 members. It would therefore be possible to hold a quorate meeting of the sub committee although there would be one less Elected Member than is stipulated and should any of the Independent or Parish Members have a conflict of interests there could be real issues achieving this quorum.. However Standards Committee may be of the view that this would upset the balance of the committee and that therefore transitional arrangements should be put into place,



enabling all members of the Standards Committee to be eligible to participate in a meeting of the Hearings Sub Committee pending delivery of the hearings training.

#### **4.0 Implications For Council Policy And Governance**

4.1 The training of Members of the Standards Committee will promote consistency of decision making through the assessment and review, consideration and hearing processes. This will in turn improve public confidence in the complaints process and reassure Members that complaints in relation to them will be dealt with fairly.

#### **5.0 Legal And Resource Implications**

5.1 There are no legal implications to this report.

5.2 The requirements for the provision of the recommended training can be met from within existing resources.

#### **6.0 Conclusions**

6.1 A number of learning targets have been identified for members of the Standards Committee.

6.2 The Sub-Committees of the Standards Committee are responsible for functions relating to complaints made against Members under the Members' Code of Conduct.

6.3 It is considered essential that members of the Standards Committee should complete certain elements marked 'compulsory' on the training plan, attached as appendix 1 to this document, prior to taking up positions on the sub-committees of the Standards Committee.

#### **7.0 Recommendations**

7.1 Members are requested to endorse the proposal that specified elements of the Standards Committee Training Plan be compulsory, and to recommend the proposed amendment to Article 9 of the Constitution to the General Purposes Committee.

#### Background Documents

Local Government Act 2000

Minutes of Corporate Governance and Audit Committee, 30<sup>th</sup> June 2009

Article 9 of the Constitution

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## Standards Committee Training Plan

LEARNING TARGET	ACTION	TIME	RESPONSIBILITY	COMPULSORY/ VOLUNTARY
To ensure all members have an understanding of the Code of Conduct and various protocols governing member and officer relations	Briefing session on Ethical Framework and Members' Code Of Conduct provided during induction for all Leeds City Councillors and available to Parish Councillors	On election	Provided by Corporate Governance Team	Compulsory for LCC Members Voluntary for Town/Parish Councillors
	Briefing session on Ethical Framework and Members' Code Of Conduct for independent members and Parish Members who have not previously received training.	On appointment to Committee	Provided by Corporate Governance Team	Compulsory
	Standards Board for England DVD "The Code Uncovered"	All new members on election or appointment to the Committee	Held by Corporate Governance Team	Voluntary
	E-learning Modules "Cracking the Code"	All new members on election or appointment to the Committee	Provided by Corporate Governance Team	Voluntary
	The Local Codes and Protocols: A guide for Leeds City Council Members	On election or appointment to Committee	Provided by Corporate Governance Team	Recommended reading

LEARNING TARGET	ACTION	TIME	RESPONSIBILITY	COMPULSORY/ VOLUNTARY
To ensure all members understand the committee's relationship with external bodies/agencies	Distributing newsletters released by the Standards Board for England	Within a week of release date	Provided by Corporate Governance Team	Recommended reading
	Attendance at conferences organised by external bodies	When they arise	Provided through Corporate Governance team in conjunction with Member Development	Voluntary
	Briefing session on overall relationship with outside bodies	On appointment to committee	Provided by Assistant Chief Executive (Corporate Governance)	Compulsory
To ensure all members of the committee are aware of the role and function of the Monitoring Officer	Briefing session on role of monitoring officer	On induction / appointment to committee	Provided by Assistant Chief Executive (Corporate Governance)	Compulsory
	Attendance at committee meetings by Monitoring Officer or deputy Monitoring Officer	Every committee meeting	Provided by Assistant Chief Executive (Corporate Governance)	
To ensure all members of the Committee are aware of current issues for the Committee and the context of the Committee's work	Briefing session on the Committee's current work and current standards issues	On appointment to the Committee	Provided by Assistant Chief Executive (Corporate Governance)	Compulsory

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LEARNING TARGET	ACTION	TIME	RESPONSIBILITY	COMPULSORY/ VOLUNTARY
To ensure all external members of the Committee have the necessary awareness of Council business, the political context, and the role of a City Councillor	Briefing session on Council business and political context	On appointment to the Committee	Provided by Assistant Chief Executive (Corporate Governance)	Compulsory
	Attendance at sample meetings of Full Council, Executive Board, Plans Panel or Licensing and Regulatory Panel, Scrutiny Board and other Committees to observe.  Members may not feel it necessary to attend the whole of the meeting but may find it helpful to discuss with the relevant officers the role of the Committee prior to attending.	On appointment to the Committee	Facilitated by Corporate Governance Team	Voluntary (Strongly advised)
	Training on Council structures and decision making (briefing session).	On appointment to the Committee	Provided by Corporate Governance Team	Compulsory
	Attendance at Councillor Ward Surgeries to observe – agreement must be obtained from Member to be observed.	On appointment to the Committee	Arranged directly between Members	Voluntary

LEARNING TARGET	ACTION	TIME	RESPONSIBILITY	COMPULSORY/ VOLUNTARY
<p>To ensure all independent members of the Committee have the necessary skills to chair meetings of the Committee</p> <p>Compulsory element must be undertaken prior to chairing either the Standards Committee or any of its Sub-Committees.</p>	Training session on chairing meetings	All new members on appointment to the Committee	Provided through Member Development	Compulsory
<p>To ensure all members of the Committee have the necessary skills to assess or review local complaints</p> <p>Compulsory elements to be completed prior to appointment to Assessment Sub-Committee or Review Sub-Committee</p>	Consideration of six monthly complaints report	Every six months	Provided by Corporate Governance Team	Recommended Reading
	Training day to include mock local assessment exercise with example cases	<p>All new members on appointment to the Committee</p> <p>For existing Members annually or earlier if necessary (to be run alongside update training on the Members' Code of Conduct)</p>	Provided by Corporate Governance Team	Compulsory

LEARNING TARGET	ACTION	TIME	RESPONSIBILITY	COMPULSORY/ VOLUNTARY
To ensure all members of the Committee have the necessary skills to consider final investigation reports	Training day with an external facilitator (to include consideration of example cases)	All new members on appointment to the Committee  For existing members annually or earlier if necessary (to be run alongside the hearings training)	Provided by Corporate Governance Team – in conjunction with external facilitator where possible	Compulsory
To ensure all members have the necessary skills to conduct a local hearing	Briefing session on Standards Committee Procedure Rules		Provided by Assistant Chief Executive (Corporate Governance)	Compulsory
Compulsory elements to be completed prior to appointment to Hearings Sub-Committee	Manual of guidance	All new members on appointment to the Committee provided with a copy for use during training / hearings.	Provided by Corporate Governance Team	Recommended reading
	Standards Board for England DVD 'Going Local: Investigations and Hearings'	All new members on appointment to the Committee	Held by the Corporate Governance Team	Voluntary
	Training day (including mock hearing exercise)	Annually or earlier if necessary – to be run alongside consideration training	Provided by Corporate Governance Team – in conjunction with external facilitator where possible	Compulsory

LEARNING TARGET	ACTION	TIME	RESPONSIBILITY	COMPULSORY/ VOLUNTARY
	Regular reports on Adjudication Panel for England cases and decisions	Every committee meeting	Provided by Corporate Governance Team	Recommended reading





Originator: Laura Ford

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**Report of the Assistant Chief Executive (Corporate Governance)**

**Standards Committee**

**Date: 15<sup>th</sup> October 2009**

**Subject: Adjudication Panel for England: Decisions of Case Tribunals**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**Executive Summary**

1. This report provides summaries of the recent decisions made by the Adjudication Panel for England regarding allegations of misconduct against Members. The case tribunal decisions have each been summarised and then conclusions drawn regarding whether there are any lessons to be learnt for Leeds City Council.
2. Members of the Committee are asked to note the recent decisions of the case tribunals and to consider the lessons to be learnt for Leeds City Council.

## 1.0 Purpose Of This Report

- 1.1 This report provides summaries of recent decisions made by the Adjudication Panel for England in its role of determining allegations of misconduct. Further details of specific cases are available at [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk)

## 2.0 Background Information

- 2.1 Thirteen case tribunal decisions and seven appeals tribunal decisions have been published since the last report, however six cases which related to the same Council were considered together at one tribunal. The decisions are summarised below, in order that Members of the Committee 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 those Members who have requested them.
- 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.
- 2.3 Members of the Committee may wish to note that the cases have been separated into those involving Borough, City or District Councils, those involving Parish and Town Councils, and those which are appeals against local standards committee decisions, for ease of reference.

## 3.0 Main Issues

### **Borough, City or District Councils**

#### Somerset County Council (i)

- 3.1 It was alleged that a Councillor had failed to treat others with respect, contrary to paragraph 3(1) of the Code of Conduct in relation to:
- An e-mail which he sent to Nick Graham, an officer of the Council;
  - His conduct towards Miriam Maddison, and officer of the Council;
  - His conduct during a telephone conversation with Sarah Diacono, an officer of the Council; and
  - His conduct towards Philip Downer, an officer of the Council.

#### E-Mail to Nick Graham

- 3.2 The Councillor requested a meeting with Nick Graham, the Council's Corporate Web Manager. Mr Graham's Head of Service advised him not to meet with the Councillor as she believed that she could provide the information he required during another meeting. Mr Graham e-mailed the Councillor to cancel the meeting. The Councillor replied to Mr Graham by e-mail (copied to the Chief Executive, his Head of Service, and the Leader of the Council), saying, 'Thank you for cancelling our meeting. Firstly, For the avoidance of any doubt in the future. When I ask for a meeting to be arranged I expect it to be so arranged. If I feel the need to cancel it or rearrange it I will. I do NOT expect you or any other officer in the County Council to have to seek prior approval from ANYBODY to meet with me', and to request that another meeting be arranged regarding the web strategy.

- 3.3 The case tribunal took into account the following factors when deciding whether the e-mail should be considered a breach of the Code:
- It would have been preferable for Mr Graham's Head of Service to have raised this matter with the Councillor as she was the senior officer and it was her wish that the meeting did not take place;
  - It was not surprising that the Councillor was annoyed at the manner in which the meeting was cancelled, which was in itself arbitrary and gave no substantial explanation of why the Councillor having met with the Head of Service would make the meeting 'superfluous';
  - It was desirable that the threshold for a failure to treat another with disrespect be set at a level that allowed for the minor annoyances and on occasions bad manners which are a part of life;
  - Mr Graham was upset and shocked by the Councillor's e-mail, and was a relatively junior officer with no experience of dealing with Members. However Mr Graham's reaction is not determinative of the issue and in the case tribunal's view a number of other factors needed to be considered;
  - Whilst the first part of the e-mail is arguably abrupt and sarcastic, the second part is friendly and positive, and addressed directly to the things which Mr Graham dealt with in his work;
  - It was the case tribunal's view that the Head of Service is the target of the first part of the e-mail as it relates to the cancellation of the meeting and the need for prior approval;
  - Although the ESO suggested that the use of capitals in the e-mail is to be equated to shouting, it was the case tribunal's view that it was to be noted that only two words are in capitals and these are both in the first part of the e-mail and add emphasis to the Councillor's key point. While there may be circumstances when it is appropriate to equate capitals to shouting this limited use was not such an occasion.

- 3.4 The case tribunal did not condone the tone or wording of the first part of the e-mail but looked at in the particular circumstances, it fell just short of being a breach of the Code.

#### Conduct towards Miriam Maddison

- 3.5 Avon and Somerset Constabulary commenced an investigation into a number of suspicious deaths at a Somerset County Council residential care home. Ms Maddison, the Council's Corporate Director for Community Services and Director of Adult Social Services was informed of the investigation and requested that information about the investigation be restricted to a very limited number of people. Ms Maddison only told the Chief Executive, the Portfolio Holder and the Leader of the Council. Ms Maddison became aware that a national newspaper was aware of the investigation and was going to run a major news story the following day. She informed the Leader and the Portfolio Holder of this, and it was agreed that key Members should be informed. The Leader contacted the Councillor that evening. The story appeared in the newspaper the next day (15 March 2007).
- 3.6 In a memo to the Chief Executive dated 2 April 2007, Ms Maddison stated that on 15 March 2007, the Councillor had arrived at her office at 8.30am and told her off in an aggressive manner for not telling him about the case at a much earlier stage. She also alleged that he spoke to her in a raised voice and an angry tone.

- 3.7 The case tribunal took into account the following factors when deciding whether this conduct should be considered a breach of the Code:
- Ms Maddison's PA, whose desk was just outside Ms Maddison's office doorway, did not recall the incident;
  - Ms Maddison is one of four Corporate Directors of the Council and thus a very senior officer. She is used to dealing with Members and is to be expected at times to have to cope with the conflicts which arise from the differing perceptions of officers and Members;
  - The fact that Ms Maddison had not thought fit to raise the question of the Councillor's conduct of her own volition immediately after it had taken place.

3.8 Therefore, the case tribunal concluded that the Councillor's conduct was not disrespectful in this incident.

#### Telephone conversation with Sarah Diacono

3.9 It was alleged that the Councillor had failed to treat Ms Davidson-Grant with respect by, in a telephone conversation with Ms Diacono, using inappropriate language and advising her that she had offended Ms Davidson-Grant (her Corporate Director), and that she had the intention of managing her out of the organisation.

- 3.10 The case tribunal took into account the following factors when deciding whether this conduct should be considered a breach of the Code:
- The case tribunal found that the Councillor had not said anything new about the nature of Ms Diacono's relationship with Ms Davidson-Grant, and that the conversation was not remembered in detail by the parties or the others who overheard the conversation;
  - If the Councillor had undermined Ms Diacono's relationship with her senior officer then that would be disrespectful to the senior officer, however such a finding required something more than the Councillor, in what was a gossipy conversation, simply going along with or even rehearsing Ms Diacono's pre-existing view of the situation;
  - It had to be recognised that people gossip and at work they gossip about their boss and their perceptions of their boss and it would be unrealistic to expect Members and officers not to gossip about other Members and officers;
  - In the case tribunal's view such conversations were to be taken for what they were, as informal conversations which on occasion strayed from hard fact;

3.11 The case tribunal therefore found that the Councillor's conversation with Ms Diacono did not amount to a failure to treat Ms Davidson-Grant with disrespect.

#### Behaviour towards Philip Downer

3.12 In April 2007, the Council held a 'meet the bidder' event for staff in relation to a project which might have potentially resulted in some officers having their employment transferred to a new joint venture company. During the meeting the Councillor stood at the back of the room. Towards the end of the session Mr Downer, a database administrator at the Council asked the panel two questions. Two witnesses stated that, while Mr Downer's questions were asked in a robust fashion, he was polite and did not behave inappropriately.

3.13 The case tribunal found that whilst Mr Downer was asking his questions, the Councillor made the remarks 'who is the wanker, what's his name', and 'shutting the

bastard up before it gets any more embarrassing'. The case tribunal also concluded that the Councillor had engaged Mr Downer in a short conversation of a few minutes after the meeting during which he was aggressive and angry, and that Mr Downer was intimidated by the Councillor.

- 3.14 The case tribunal found that the purpose of the meeting was to provide an opportunity for the staff affected by the project to raise their concerns in a safe environment. Thus whatever the rights and wrongs of Mr Downer's statements and questions they should have been treated in a neutral manner and a direct and angry challenge was inappropriate as it was against the spirit of the meeting.
- 3.15 In the case tribunal's judgement there was no doubt that a reasonable person would consider that the Councillor's remarks were disrespectful of Mr Downer. It is a matter of common knowledge that the expression 'wanker' is a term of insult and is meant to be disrespectful of the person to whom it is applied. Equally the other remarks of the Councillor about 'shutting the bastard up' would be understood by a reasonable person as intended to be insulting and disrespectful. For these reasons the case tribunal concluded that the Councillor had failed to respect Mr Downer contrary to paragraph 3(1) of the Code.
- 3.16 Similarly the aggressive and angry tone of the Councillor's conversation with Mr Downer went beyond a robust disagreement and intimidated Mr Downer. Mr Downer and two of the witnesses to the conversation had also thought the matter serious enough to pursue it by way of an internal complaint shortly after the incident. For these reasons the case tribunal concluded that the Councillor had failed to respect Mr Downer contrary to paragraph 3(1) of the Code.
- 3.17 The tribunal viewed this incident as one breach of the Code because the events arose from Mr Downer's statements and questions and there was no opportunity for the Councillor to 'cool off' before the end of the meeting. In deciding what sanction to apply, the case tribunal considered the following points:
- The breach was at the less serious end of the scale as the Councillor's remarks had not been made directly to Mr Downer and he had probably not intended them to be overheard;
  - The conversation with Mr Downer had not contained an abusive language and the Councillor's motivation had been to set the record straight and in his attempt to do so he had overstepped the mark;
  - As the Councillor was no longer the Deputy Leader of the Council or a member of a political group there was little likelihood of such conduct being repeated in his daily dealings with officers;
  - The limited seriousness of the breach and the short time remaining until the next elections indicated that this was not an appropriate case for disqualification. This view was supported by the initial assessment of the ESO that this was a case suitable for determination by the Council's own Standards Committee (however as the case had attracted a lot of publicity it had been referred to the Adjudication Panel for England);
  - As the Councillor no longer held any office other than that of Councillor, it would be difficult to target a suspension of the Councillor at anything other than his basic duties of representing those who had elected him which was, in the case tribunal's view, inappropriate;
  - From the evidence heard there was no indication that there was any realistic proposition of reconciliation or scope for apology. The short period remaining

until the end of the Councillor's term of office and his denials led the case tribunal to the view that training was not an appropriate sanction.

- 3.18 Taking into account the above factors the case tribunal found that the appropriate sanction was to censure the Councillor (i.e. the tribunal expressed their strong disapproval of the Councillor's actions).
- 3.19 **In Leeds, Members are provided with guidance on how to communicate with officers through the Protocol on Member Officer Relations, contained in Part 5 of the Council's Constitution. The Protocol states that the basis of the Member Officer relationship should be mutual confidence and trust, and warns against more extreme forms and behaviour and emotion which are rarely conducive to establishing mutual respect. The Protocol also asks that any dealings and correspondence between Members and Officers observes standards of courtesy.**

Somerset County Council (ii)

- 3.20 It was alleged that a Councillor had failed to comply with the Code of Conduct by making written allegations of serious misconduct by Mr Jones, the Chief Executive of the Council, to the Society of Local Authority Chief Executives (SOLACE) and the Association of Local Authority Chief Executives (ALACE) and to the County Council, and in doing so:
- Intimidated or attempted to intimidate Mr Jones, a complainant in a Code of Conduct investigation, contrary to paragraph 3(2)(c) of the Code;
  - Used his position as a Member improperly to confer a disadvantage on Mr Jones, contrary to paragraph 6(a) of the Code; and
  - Brought his office or authority into disrepute, contrary to paragraph 5 of the Code.
- 3.21 In April 2007, the Chief Executive of Somerset County Council made a number of complaints about the Councillor's behaviour to Standards for England. Later on that year, the Councillor made a formal complaint to the Council about the Chief Executive's conduct which the Council decided not to investigate.
- 3.22 Following a further complaint from the Chief Executive about the Councillor, the Council's Liberal Democrat group asked the Councillor if he would suspend himself from the group pending the outcome of all ongoing investigations, but he declined. The Councillor was notified that his membership of the Liberal Democrat group had been formally revoked on 5 December 2007.
- 3.23 On that same day, the Councillor wrote a letter to the Association of Local Authority Chief Executives (ALACE) stating formal complaints about the Chief Executive and listed five headings of inappropriate and unacceptable types of behaviour that the Chief Executive had allegedly committed. And five days later, he sent a letter in identical terms to the Society of Local Authority Chief Executives (SOLACE).
- 3.24 On 15 December 2007 the Councillor further wrote a formal complaint to the Council's Monitoring Officer in almost identical terms. He was asked by the Monitoring Officer to give specific details rather than headings of the matters about which he wished to complain. He did so in a letter dated 2 January 2008.
- 3.25 The Chief Executive then complained about the Councillor's motivation and intent in

making the serious allegations about him in the letters. This was because the Councillor knew that Chief Executive was the complainant in an ongoing investigation.

- 3.26 The Tribunal's findings were that the Councillor had not voiced the concerns he was now alleging and that:
- although he may have formed a belief about the seriousness of the alleged behaviour, there was no evidence to suggest that it was reasonable for him to have done so;
  - whatever he had seen, he did not at the time regard the alleged incidents as seriously as he was asserting at the time he wrote the letters; and
  - he had knowingly exaggerated the facts about the Chief Executive's style and performance in order to strengthen his allegations of serious misconduct.
- 3.27 Counsel for the ethical standards officer (ESO) had referred the Adjudication Panel to the Shorter Oxford Dictionary definition of the word 'intimidate' as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence.
- 3.28 Against this background, the Case Tribunal had no doubt that in writing the letters to ALACE and SOLACE and later to the council, the Councillor was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career.
- 3.29 The case tribunal also concluded that the Councillor intended to cause the Chief Executive a disadvantage both in terms of his future employment with the Council or more widely. Because those letters were submitted essentially as an act of revenge, the respondent did use his position improperly and had thus failed to follow the provisions of paragraph 6(a) of the council's Code of Conduct.
- 3.30 The tribunal also found that even though there was no evidence that the Chief Executive was intimidated, that did not of itself mean that the allegation of a breach of paragraph 3(c) failed. There would still be such a breach if the respondent had attempted such intimidation.
- 3.31 The case tribunal believed that for the claim to succeed it would have to accept that the letters were intended to intimidate the Chief Executive into:
- altering any evidence he was called upon to give against the Councillor; or
  - not making further complaints about the Councillor.
- 3.32 On the facts of this particular case the case tribunal concluded that neither were the Councillor's intention. The evidence here was that the respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Therefore there was no breach of paragraph 3(c) of the Council's Code.
- 3.33 In deciding whether the Councillor had brought his office into disrepute, the statement in the Livingstone case about the need to separate the bringing into disrepute of the office rather than the person holding the office caused the case tribunal some difficulty. The case tribunal took into account the recent controversy about claims for large expenses submitted by some Members of Parliament. That has had the consequence of bringing the office of the MP into disrepute, in the eyes of the public, a disrepute which the public attaches even to those MPs of whom no

personal criticism has been made.

- 3.34 The particular actions of the Councillor which the case tribunal had considered, even when seen in the context of an ongoing breakdown of relations with a Chief Executive and regardless of where fault lies for that breakdown, cannot do other than bring the office of Councillor into disrepute. The case tribunal therefore found that there had been a failure to follow the provisions of paragraph 5 of the Code of Conduct.
- 3.35 The Case Tribunal's view was that the Councillor, in allowing his actions to be motivated by his desire for revenge, had shown himself to be unfit to be a Councillor and local authorities should be protected from his membership. This is a case where if the Councillor had still been serving as a Councillor the case tribunal would have disqualified him.
- 3.36 Although the Councillor had by then ceased to be a Councillor, he was disqualified was two years.
- 3.37 The case tribunal also had some reservations about the procedures used by the Council in considering the Councillor's complaints about the Chief Executive. Public confidence in the Council's procedures in such cases would in the tribunal's view be enhanced if there were an independent element involved in participating in or reviewing the early stages of that process. This recommendation was therefore made to the Council.
- 3.38 In Leeds, Members who have concerns about the capabilities or conduct of an officer are advised through the Protocol on Member Officer Relations to avoid personal attacks on or abuse of the officer, ensure that any criticism is well founded and constructive, never make a criticism in public, and to take up the concern with the officer privately. If this is inappropriate, Members are advised to raise their concerns with the relevant director. Complaints about the Chief Executive should be raised with the Leader, who may refer the complaint to the Employment Committee. A separate disciplinary procedure for the Chief Executive is currently being drafted.**

#### West Somerset District Council

- 3.39 It was alleged that a Councillor had failed to comply with the Members' Code of Conduct by disclosing information of a confidential nature given to Members in confidence about a proposed redundancy agreement with the council's Chief Executive without the disclosure being reasonable and in the public interest, contrary to Paragraph 4(a) of the Code.
- 3.40 On 12 December 2007 West Somerset District Council considered a report containing information about a redundancy settlement for the Chief Executive, including financial elements of the arrangements and personal details of the Chief Executive. The Council resolved, without dissent or discussion from any Member, to exclude the press and the public while the report was considered.
- 3.41 Following the meeting, the Councillor communicated with the press and disclosed the details of the Chief Executive's redundancy package based on the information in the report. At the time, the Councillor did not know whether the agreement with the



Chief Executive had been concluded. The information was then published in the local newspaper and correctly attributed to the Councillor on 28 December 2007.

- 3.42 The case tribunal considered whether the information disclosed by the Councillor was of a confidential nature. The case tribunal did not accept that the information was readily available by other means, as although the Chief Executive's salary was already public knowledge within £10,000 bands within the Council's published accounts, more information, such as years of service and age would have been required to work out his redundancy pay. There were also other elements in the settlement that had never been in the public domain, as well as personal biographical details.
- 3.43 The case tribunal also considered that the information that was disclosed was given to the Councillor in confidence and was of a confidential nature, as it was received at an 'exempt' session of the Council, the minutes of which show that the Council considered the public interest test in deciding whether the information should be kept confidential.
- 3.44 The Councillor had relied upon the decision of the Information Commissioner dated 25 August 2005 relating to Corby Borough Council, where it was ruled that the Council should disclose the exact total amount paid to an Interim Head of Finance. The case tribunal considered that there were clear differences between the circumstances in the Corby case and the case before it, and was also referred to the Information Commissioner's guidance 'When should salaries be disclosed?'. The case tribunal decided that although the guidance related to salaries rather than redundancy payments, the principles were relevant and supported the argument that the Chief Executive's detailed redundancy arrangements could legitimately be considered to be confidential.
- 3.45 The case tribunal therefore concluded that the Councillor had disclosed information given to him in confidence and which he believed or ought reasonably to have been aware was of a confidential nature. The case tribunal then had to consider whether any of the exceptions listed in paragraph 4 applied, namely:
- (a) Did the respondent have the consent of a person authorised to give it?;
  - (b) Was the respondent required by law to disclose the information?;
  - (c) Was the disclosure made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person?; and
  - (d) Was the disclosure reasonable and in the public interest, and made in good faith and in compliance with the reasonable requirements of the authority?
- 3.46 The case tribunal decided that points (a), (b) and (c) did not apply. In relation to (d), it was first considered whether the disclosure was reasonable and in the public interest. The case tribunal considered the factors in favour and against disclosure of the information, and concluded that there should have been some transparency in relation to the Chief Executive's redundancy arrangements, but that he was entitled to some privacy in his financial arrangements and that the details of his redundancy package should not have been disclosed by the Councillor. It was therefore considered that it was not in the public interest to disclose the information, particularly as the full Council had agreed unanimously to treat the information as exempt and as a matter of good governance there was a public interest in Councils being able to rely on confidential information remaining so where the proper process had been followed.

- 3.47 The case tribunal did not consider that the Councillor had made the disclosure in good faith or in compliance with the reasonable requirements of the authority. It was therefore concluded that the Councillor had breached paragraph 4 of the Code of Conduct.
- 3.48 In deciding what sanction to apply, the case tribunal took into account the following factors:
- The Councillor's relative inexperience as a councillor and his desire to do the best by his constituents;
  - The fact that this was a case where the Councillor had released information which was clearly provided to him in confidence and where harm could have been caused;
  - The Councillor's concern that the fact of the Chief Executive's redundancy should be made public, and it appeared that the Council had failed to indicate that it was intending to publicise this;
  - It was a serious matter to disclose confidential information in breach of the Code;
  - Although the Councillor had accepted that he had breached the Code, he had not expressed remorse. The Councillor also considered that the Code of Conduct provides unwelcome restraints on what he could do as a Councillor; and
  - The case tribunal considered that as a matter of good governance the Council and Council employees should be entitled to be able to rely on Councillors to keep confidential information that was provided to them during 'exempt' business.
- 3.49 The case tribunal decided unanimously to suspend the Councillor from being a Member of West Somerset District Council for a period of three months.
- 3.50 In Leeds, Members are given training on how to deal with the media through the personal development programme. Members are also given guidance through the Member/Officer Protocol which states that Members must always indicate in what capacity they are speaking and give thought to the likely consequences of their comments for the Council.**
- 3.51 The Access to Information Procedure Rules explain that should a Member wish to disclose exempt information, they should approach the relevant Director for decision as to whether that information should be disclosed. Disclosure by a Member would only be refused if the Director decided that if the Council received an FOI request at that time, the Council would not be obliged to disclose that information.**
- Gosport Borough Council  
*(This decision has been appealed to the High Court, the result of which is awaited. The President has agreed to suspend the effect of the sanction pending the High Court's decision effective from 29 July 2009.)*
- 3.52 It was alleged that a Councillor had breached the Code of Conduct by failing to declare a personal and prejudicial interest in matters relating to the Stokes Bay music festival at a full Council meeting held on 14 July 2008.

- 3.53 The Councillor, in his private capacity as an events organiser, had been liaising extensively with the council in 2008 over his plans to stage a music festival at Stokes Bay. The festival was to be held on council-owned land and would need licences for alcohol sales and live entertainment. The Councillor was the sole director of a limited company set up to handle the financial aspects of this festival.
- 3.54 Despite his role as the main event organiser and promoter, the Councillor refused to declare an interest, even when prompted, during a Council meeting in which a motion was proposed which included reviewing the terms of the arrangements between him and the Council.
- 3.55 As well as refusing to declare an interest or leave the meeting, during which advice sought by the Council on the legal implications of changing the arrangements was presented, the Councillor also breached the Code of Conduct by voting. He cast his vote against the motion to change the terms of his agreement with the Council over the fees and licensing for the festival.
- 3.56 The motion was lost by 16 votes to 17. Had the motion been tied, the Mayor - who had voted in favour of it - would have been given the deciding vote.
- 3.57 The case tribunal considered that the Councillor had a personal interest in the motion (which was intended to reconsider the decision to grant the Councillor permission, in principle to hold the music festival) because he was the main festival organiser, employee, sole director and owner of the company which organised and ran the Stokes Bay music festival. The Councillor and his company handled all the finances relating to the festival and he was the person with whom the Council were proposing to enter into a land licence agreement for the staging of the festival. The cost of staging the music festival was about £270,000.
- 3.58 The motion under consideration therefore affected the Councillor's employment and business and any decision in relation to the Stokes Bay music festival might reasonably be regarded as affecting his well-being or financial position to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward affected by the decision.
- 3.59 The case tribunal also considered that the interest was also a prejudicial one as it was one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it was likely to prejudice the Councillor's judgement of the public interest.
- 3.60 The case tribunal considered that failing to declare a personal and prejudicial interest in the motion and not withdrawing from the council chamber before a vote was taken was in breach of paragraphs 9 and 12 of the Code of Conduct.
- 3.61 It was also considered that by this conduct, the Councillor used his position as a Member of the Council to improperly influence the outcome of the motion to his and his company's advantage which was also a breach of paragraph 6(a) of the Code. Further, by this conduct, the Councillor, as an experienced Member had also brought discredit to his office and lowered the esteem of the Council in the mind of a reasonable member of the public. Therefore it was considered that the Councillor had also brought his office and authority into disrepute in breach of paragraph 5 of the Code.

- 3.62 In deciding what sanction to apply, the case tribunal took into account the following factors:
- This was an extremely serious case which went to the very heart of the ethical framework within which local government must operate;
  - The facts in the case clearly indicated that the Councillor took a deliberate decision not to declare a personal and prejudicial interest in the motion relating to Stokes Bay music festival. It was also clear that he had a financial interest relating to this commercial enterprise;
  - This was a blatant and deliberate disregard for the Code of Conduct which would have undermined the confidence that members of the public had in the integrity of the Council, particularly as this conduct came from someone with such seniority and experience;
  - The Councillor's record of good service, that he had recognised that there had been a failure on his part to comply with the Code of Conduct and had issued a public apology to his electorate, and had stood down from his posts as Deputy Leader and Chairman of the Council's Community and Environment Board as a result;
  - These breaches were of such a serious nature, in that the Councillor had deliberately sought to misuse his position and had deliberately failed to abide by the Code, that, notwithstanding the Councillor's recent re-election to Hampshire County Council, the most severe of sanctions, being disqualification was appropriate and proportionate in this case;
  - Two examples of caselaw, in which the Members concerned had been re-elected since the events before the case tribunal; and
  - The Councillor's conduct had shown that he was unfit to fulfil the responsibilities which the electorate had invested in him, and any sanction imposed should aim to uphold and improve the standard of conduct expected of Members as part of the process of fostering public confidence and democracy.

3.63 The case tribunal were of the view that a period of two years disqualification was the minimum which could properly meet the gravity of this breach.

**3.64 In Leeds, Members are strongly advised that where their interest in a matter is prejudicial, they should not participate or give the appearance of trying to participate in the making of any decision on the matter by the authority. Officers in Governance Services also compare meeting agendas with the relevant Committee Members' register of interests, and alert the Member concerned if a potential interest is identified.**

### **Parish and Town Councils**

#### **Maltby Town Council**

- 3.65 It was alleged that a Councillor had breached the Code of Conduct by:
- Instructing a solicitor, without the authority of Maltby Town Council, to defend eight Councillors accused in a grievance brought by the former Town Clerk;
  - Introducing a resolution to suspend Mr Morton at a Council meeting without giving the required notice, thus causing Mr Morton humiliation; and
  - Failing to allow consideration of excluding the press and public from that meeting, so adding to the distress caused to Mr Morton.

- 3.66 The Town Clerk, Mr Morton, initiated a grievance against a number of Councillors (not including the Councillor in this case), which lacked details to support the grievance. The Councillor met with a solicitor to seek advice about many issues facing Maltby Town Council as he felt there was no support available from Rotherham MBC and he did not wish to approach the Yorkshire Local Councils Association as he believed that the Town Clerk worked for this organisation. The solicitor understood that he was being asked to advise Maltby Town Council. There had been no authorisation by the Council to instruct a solicitor, therefore the Councillor breached Standing Order 67 by instructing a solicitor on behalf of Maltby Town Council without authority to do so.
- 3.67 Following this, three Councillors were tasked with conducting a grievance hearing related to Mr Morton. They sought advice from Rotherham MBC, who said that they would not be able to provide legal advice. They then obtained advice from a solicitor without authorisation from the Council. The case tribunal was satisfied that this was done in good faith through a lack of knowledge of the governance framework for the Council.
- 3.68 The Councillor met with the solicitor on subsequent occasions, including on one instance with seven or eight other Councillors when the suspension of the Clerk was discussed. At this meeting the solicitor drafted a five point resolution and a letter to be handed to Mr Morton.
- 3.69 At the Council's meeting on the same date the Councillor introduced the resolution which was not on the agenda and which proposed disciplinary proceedings against the Town Clerk and his immediate suspension. The Councillor did not allow any consideration of whether to exclude press and public before the Council considered the resolution, contrary to Standing Order 38.
- 3.70 The resolution was passed resulting in the immediate suspension of Mr Morton, and the Councillor handed a letter to Mr Morton. The case tribunal was satisfied from the oral and written evidence that no attempt was made to inform Mr Morton of the intention to suspend him and no relevant document was provided to him until after the vote had been taken. Mr Morton submitted his resignation to the Councillor on the following day. The Councillor paid for the services of the solicitor himself.
- 3.71 The tribunal was satisfied that the Councillor failed to treat Mr Morton with respect by deciding to bring a resolution to suspend him without notice, and refusing to allow consideration of a motion excluding the press and public.
- 3.72 As Chair, the Councillor was responsible for the conduct of the meeting. He was advised not to conduct the meeting in this way and disregarded that advice by not permitting debate on the motion. The ordinary business of the meeting was therefore disrupted and deferred to a later date, and the Councillors who were not present at the meeting were unaware that a major decision of this nature might be considered. The case tribunal considered that these actions as Chair of the Council brought his office as Chair and Councillor and his authority into disrepute.
- 3.73 Whilst concerned at the way the solicitor was instructed and the lack of clarity in the relationship with the solicitor, the case tribunal was not satisfied that this in itself brought the Council into disrepute.

- 3.74 In considering what sanction to apply, the case tribunal took into account the following factors:
- The Councillor's previous exemplary record, and the fact that his difficulties only started when he became Chair of Maltby Town Council, which was widely regarded as a difficult role to fulfill;
  - The changing accounts of events which the Councillor had given over time to the ESO, his propensity to blame others and his partial remorse;
  - The voluntary nature of the Councillor's work as a Town Councillor and his relative lack of management experience;
  - The Councillor had received or been offered a range of relevant training and had served as a Councillor for eight years before the events in question;
  - The disrespect and disrepute were serious matters especially in the Councillor's role as Chair where he had a considerable influence on the course of events. In light of their serious nature and the gravity of the consequences for Mr Morton the case tribunal considered that suspension from the Council as a whole was the appropriate sanction and that suspension from the Chair of the Town Council and from service as a member of Rotherham MBC's Standards Committee was essential; and
  - In light of his good service as a ward Councillor the suspension from Maltby Town Council was for a shorter period than would otherwise be the case.
- 3.75 The case tribunal imposed the following sanctions:
- Partial suspension from serving as the Chair of Maltby Town Council for a period of 12 months;
  - Partial suspension from serving as a member of Rotherham MBC's Standards Committee for a period of 12 months; and
  - Suspension from membership of Maltby Town Council for a period of three months.

#### Dartmouth Town Council

- 3.76 It was alleged that a Councillor had failed to comply with paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct by constantly undermining and bullying the Town Clerk, Mr Horan and showing contempt and disrespect to him, other staff of the Council and Council Members.
- 3.77 The Councillor was alleged to have bullied and undermined the Dartmouth Town Clerk over a long period. He subjected the Clerk at one stage to almost daily visits in the Council's offices, during which he would frequently become aggressive, angry and intimidating in front of officers and Members. He also repeatedly accused the Clerk of incompetence, to his face and to others.
- 3.78 The Councillor's conduct at Council meetings, attended by the local press and the general public, was often aggressive, and was so disruptive that on one occasion, a senior police officer attending the meeting believed it to be verging on public disorder and considered intervening. He declined to sit down at Council meetings on frequent occasions, in spite of the ruling of the Mayor.
- 3.79 Mr Horan also became ill and was absent from work for about four weeks, which he attributed directly to his treatment by the Councillor.

- 3.80 The Councillor was also disrespectful to other Members, referring to the Mayor as a 'bloody hypocritical bitch', and claiming in a letter to a new Member that two of their fellow Councillors were showing 'signs of serious dementia'. Council staff found his discussions with other members so heated that they had to ask for the conversations to be held elsewhere, as they disturbed the running of the Council office.
- 3.81 In April 2008, Members resolved on a vote of fourteen out of fifteen Members present that they deplored the behaviour of the Councillor, disassociated themselves from comments made by him and considered his actions disloyal to the Council, misleading the public and demeaning in the public arena. At the same meeting the Councillor was suspended from all Council Committees for a period of six months.
- 3.82 The case tribunal concluded that at all material times, when the conduct complained about took place, the Councillor was acting in his official capacity. His conduct took place in the council offices, at council meetings and in correspondence with other Councillors, the content of which was about Council business. Even though the Councillor stated that two pieces of correspondence were private, he did not dispute that he wrote them in his capacity as a Councillor advising newly elected Members about his perception of other Councillors and the workings of the Town Council.
- 3.83 The case tribunal then considered whether the Councillor's conduct failed to treat others with respect and/or was such as to amount to bullying. Although the case tribunal accepted that Councillors may disagree with Council officers on the implementation of Council policy and may have justifiable concerns about an officer's effectiveness, there are recognised procedures which should be used to raise these concerns. The Councillor did not use these procedures in this case.
- 3.84 The Councillor's behaviour towards Mr Horan was undermining and inappropriate. It was also offensive, intimidating and on occasions, humiliating. For example, the Councillor called Mr Horan incompetent and referred to him as ineffective and inefficient to his face while standing over him.
- 3.85 The case tribunal were satisfied on the evidence that Mr Horan suffered ill health as a result of this conduct. The case tribunal found that the Councillor's conduct towards Mr Horan could reasonably be regarded as bullying and failure to treat him with respect. The case tribunal also found that the Councillor failed to treat his fellow Councillors with respect, in particular, his comments about two Councillors 'having signs of serious dementia' and that 'elderly colleagues from the lower town are losing the plot'.
- 3.86 The case tribunal then considered whether the Councillor brought his office or authority into disrepute. The case tribunal found that the Councillor had brought his office and authority into disrepute by his lack of regard for the authority of the Mayor and his conduct during Council meetings. This included verbal aggression to other Councillors, the manner in which he shouted down others, his refusal to abide by points of order asked of him by the Mayor and by conduct which was described by Police Inspector Morgan as 'bedevilment'.
- 3.87 In deciding what sanction, if any should be imposed in this case, the case tribunal took into account the following factors:

- The nature of the Councillor's breach involved unreasonable, intimidating and humiliating behaviour towards others over a number of years, and as a direct result of this a number of Councillors were distressed and upset;
- Also as a direct result of this conduct, Mr Horan suffered a period of ill health and was absent from work for about four weeks, which must have impeded the good administration of the Council;
- The breach also greatly impeded the ability of some Councillors in Council meetings to carry out their duties and responsibility for which they were elected, which damaged the reputation of the Council as a whole;
- The Councillor's length of service as a Councillor and the positive comments about his performance from colleagues;
- A previous finding by Standards for England that the Councillor had breached the Code of Conduct but which did not result in any sanction being given, had not made any impact on the Councillor's conduct;
- The Councillor had, in effect already received a period of partial suspension imposed by his fellow Councillors, and the case tribunal heard evidence that his conduct had changed very little as a result;
- During the hearing, the Councillor gave no indication that he appreciated the seriousness of his own conduct or expressed remorse for the effect this had had on others; and
- The need to uphold and improve the standard of conduct expected of Members as part of the process of fostering public confidence in local democracy.

3.88 The case tribunal was of the view that this was such a case and unanimously decided that a period of disqualification for three years was appropriate. In reaching this decision the case tribunal was mindful that any period of disqualification had to be for the minimum period necessary to enable the Councillor to reflect on his actions and the result this had on others. It also needed to be for a sufficient period of time to enable the Council to recover from this period of disruption, work together for the benefit of the electorate and begin the process of rebuilding public confidence in it.

**3.89 In Leeds, Members who have concerns about the capabilities or conduct of an officer are advised through the Protocol on Member Officer Relations to avoid personal attacks on or abuse of the officer, ensure that any criticism is well founded and constructive, never make a criticism in public, and to take up the concern with the officer privately. If this is inappropriate, Members are advised to raise their concerns with the relevant director.**

#### Needham Market Town Council

3.90 It was alleged that a Councillor had breached the Code of Conduct by calling another Councillor and the Town Council's Deputy Clerk 'proven liars' at a Council meeting on 7 May 2008.

3.91 In November 2006 the District Council's Standards Committee decided that the Councillor had failed to treat the Clerk to the Council with respect, and as a result had brought his office and authority into disrepute. The Standards Committee suspended the Councillor from office for a period of three months ('the 2006 complaint').



- 3.92 During the investigation and hearing of the 2006 complaint the Councillor alleged that the Clerk and Deputy Clerk to the Council, had lied about whether a telephone call had taken place on 22 December 2005 between himself and the Clerk. Both the investigator and the District Council's Standards Committee decided that it was unnecessary to come to a conclusion on the matter because it was not a material fact.
- 3.93 Between November 2006 and May 2008, the Councillor tried to get the Council to recognise that the Clerk and Deputy Clerk had lied about the telephone call. The Council refused to look into the matter further.
- 3.94 In April 2007 the Clerk retired as Clerk to the Council and in May 2007 she was elected as a Member of the Council.
- 3.95 At a Council meeting on in May 2008, Councillor L (the former Clerk) was elected as Town Mayor and Chair of the Council. During the election process the Councillor said that both Councillor L and the Deputy Clerk were proven blatant liars. The Councillor was given the opportunity to withdraw his comments at the end of the meeting but he refused.
- 3.96 Despite the wishes of the Councillor, the case tribunal found it unnecessary to determine which version of the events of 22 December 2005 was correct, because it was not the truth of the comments of the Councillor that was at issue but whether he had failed to treat others with respect. The case tribunal was satisfied that the comments of the Councillor were, in the particular circumstances, a breach of the Code whether or not they were true.
- 3.97 The case tribunal found that the manner in which the Councillor chose to raise the matter at the Council meeting in May 2008 was not appropriate. The Councillor's views were long standing and were well known, and there was no new information that required the Councillor to raise the issue at the meeting. The case tribunal found that the Councillor's true purpose in raising these matters was to tarnish the election of Councillor L.
- 3.98 The case tribunal found that the Councillor was capable of expressing his views in neutral language which acknowledged that the matter was disputed and referred to the facts which supported his view. Had the Councillor adopted such an approach the case tribunal thought it unlikely that he would have breached the Code.
- 3.99 The case tribunal was satisfied that the Councillor had failed to treat Councillor L with respect by referring to her as a blatant liar at the Council meeting in May 2008 because he knew that his views were disputed, that there had been no independent finding that his version of events was correct and his views were well known to the other Councillors. The case tribunal also found that the form of words used was intended to be inflammatory rather than to bring the issue to the Council's attention.
- 3.100 The case tribunal found that the position of the Deputy Clerk was different to that of Councillor L because at the time of the meeting in May 2008, she was an elected Member of the Council and therefore was in a position to reply openly in meetings. The Deputy Clerk was an officer of the Council and therefore did not have the same freedom to reply in the meeting.

- 3.101 The case tribunal had already found the Councillor's view to be of long standing and well known, and in addition there was nothing in the business of the meeting which made it necessary to refer to the Deputy Clerk. Therefore, the case tribunal concluded that the Councillor had failed to treat the Deputy Clerk with respect and had breached paragraph 3(1) of the Council's Code by referring to her as a liar at the Council meeting in May 2008.
- 3.102 As the case tribunal left the hearing room to consider its decision on sanction the Councillor told the tribunal that he had arranged for his resignation to be sent by e-mail to the Town Council that morning. He also stated that he would not stand for election until 2011 at the earliest. This left the tribunal with power only to take no further action, to censure the Councillor or to disqualify him from office.
- 3.103 The case tribunal considered that the following factors were in the Councillor's favour when considering what sanction, if any to impose on the Councillor:
- His long record of public service on both District and Town Councils;
  - His re-election to the Council in May 2007 following his suspension in November 2006 when the electors would have knowledge of his previous breach of the Code;
  - That the May 2007 election had been contested and the Councillor had received a substantial number of votes;
  - The Councillor's opinion about whether there had been a telephone call to him on 22 December 2005 had some evidential basis and was not one which it was unreasonable to hold;
  - The honesty of other Councillors and Council officers was a matter of legitimate concern to a Councillor and of public interest;
  - The Councillor had tried to get the Council to investigate his allegations in relation to the Deputy Clerk through its Employment Committee but had not, apparently, received any response; and
  - The suspension of the Councillor in November 2006 related to a different matter.
- 3.104 The case tribunal also took the following factors into account:
- The Councillor was capable of keeping the dispute running over a long period and he had demonstrated this by his actions since the dispute had started in Summer 2006 and was still being pursued at the date of the hearing nearly three years later;
  - The Councillor's view that he could not be a 'bully' because he was outnumbered by the other Councillors was rejected by the case tribunal. The Councillor's commitment was also found to be disproportionate to the substance of the dispute;
  - The Councillor's strength of character was such that he was causing genuine personal anxiety to other Councillors; and
  - The Councillor's conduct was often based on tactics which had as their objective causing difficulty for those who opposed his views, rather than achieving an objective that was in the public interest.
- 3.105 Looking at all the circumstances and in particular the events which led to his previous suspension, and the Councillor's conduct after his re-election in May 2007, the case tribunal found that it was appropriate to disqualify the Councillor for a period of 12 months to bring home to the Councillor the need to change his ways and to give a clear and public signal that this type of disruptive conduct over a long

period was unacceptable as it damaged both the image and effectiveness of local government.

### Ludlow Town Council

- 3.106 It was alleged that Councillors A, B, C, D, E and F had disclosed confidential information received during closed sessions of meetings of the Ludlow Town Council's Staffing and Appeals Sub-Committee on 9 October 2008 and of the Policy and Finance Committee on 20 October 2008 and in so doing:
- Failed to treat others with respect contrary to paragraph 3(1) of the Code;
  - Disclosed information given to them in confidence contrary to paragraph 4 of the Code;
  - Brought their office and authority into disrepute contrary to paragraph 5 of the Code; and
  - Failed to comply with paragraph 6(a) of the Code.

- 3.107 On 12 November 2008 Councillors A and B invited Councillors C, D, E and F to sign a statement which Councillor A had prepared. The preparation of the statement was triggered by a claim made by Councillor B that an Inspector of the local police, to whom he and Councillor C had reported the circumstances surrounding the destruction of some cheques belonging to the Council by a Council officer, had indicated that the town clerk had not provided a witness statement to the police. Councillors A, B, C, D, E and F signed the statement which read as follows:

*'We the undersigned Ludlow Town Councillors would like to publicly announce our condemnation of inappropriate management of public money by a member of staff at Ludlow Town Council.'*

*An investigation into the matter has not been carried out promptly or thoroughly as requested by the Council at a Council Committee. This failure makes us feel that the matter must now be investigated by the police who have the powers and authority to act. We also urge that all staff, including the clerk, fully co-operate with said investigation.'*

- 3.108 On 13 November 2008 an article with the headline 'Town Councillors call in the police' appeared in a local newspaper which was written by Mr Kibbler, who had been in contact with Councillors B and C. There was no reference in the article to the statement prepared by Councillor A, and no reference to any of the Councillors other than Councillors B and C.
- 3.109 The case tribunal was satisfied that the purpose of the statement was to act as a strong representation to the Town Clerk to encourage co-operation with the police and for a decision to refer the matter for internal investigation to be reconsidered by the full Town Council. There was no evidence of any intention that it should be made available to anyone other than the town clerk. Given that the statement contained information already known to the town clerk, there was no disclosure of confidential information given in confidence or of a confidential nature other than to the police by Councillors B and C.
- 3.110 The only evidence before the case tribunal of statements made to the press by Councillors B and C was the article dated 13 November 2008 which contained no information of a confidential nature or information disclosed to them in confidence at

any Town Council meeting. It simply recorded the fact of a report to the police.

- 3.111 The case tribunal then considered whether on these facts, any of the Councillors breached any paragraph of the Town Council's Code of Conduct. Firstly, the case tribunal considered whether any of the Councillors had failed to treat others with respect or brought their office or authority into disrepute (paragraphs 3(1) and 5 of the Code respectively). The case tribunal considered that the statement signed by the Councillors addressed issues of legitimate concern to them over the handling of a matter of significant importance to the Town Council. The case tribunal did not consider that the statement failed to treat all other officers of the Town Council with respect by not naming the individual at the centre of the allegation. The statement was not made publicly available and the only known recipient of it, the Town Clerk, knew the identity of the officer concerned.
- 3.112 Given the absence of any disrespect or breach of confidence, and given that it found as a fact that the statement was intended as a robust attempt to secure co-operation with any police investigation and for the appropriate investigatory route to be reconsidered by the Council through due process, the case tribunal did not consider that the behaviour of any of the Councillors could be said to have breached paragraph 5 of the Code.
- 3.113 The case tribunal found as a fact that the only disclosure of anything of a confidential nature or received by the Councillors in confidence was by Councillors B and C in making their complaints to the police. The case tribunal considered that this disclosure was made in accordance with their duty as a citizen to report what they considered was, potentially, serious criminal conduct to the police. The case tribunal considered that such a disclosure was either one required by law or alternatively reasonable, in the public interest, made in good faith and involving no conflict with the reasonable requirements of the Town Council. It therefore involved no breach of paragraph 4 of the Code.
- 3.114 For the reasons it has given in finding no breach of any of the other paragraphs of the Code, the case tribunal found that there was nothing improper in the behaviour of the Councillors and therefore no breach of paragraph 6 of the Code. The case tribunal found unanimously that the Councillors did not breach the Code.

### **Appeals against Standards Committee decisions**

#### **Sedgemoor District Council and Compton Bishop Parish Council**

- 3.115 The Councillor appealed against a determination by the Standards Committee to suspend him for a period of three months and to require him to submit an apology and attend training for failure to comply with paragraphs 3(1), 3(2)(b) and 5 of the Parish Council's Code of Conduct.
- 3.116 The Councillor argued that the sanction imposed by the Standards Committee was excessive and disproportionate, for the following reasons:
- The Councillor thought that it was clear that he had good reason to behave in the way he did, given the provocation he experienced from certain Members of the Council and his frustration at being unable to express himself verbally in a meeting or on the phone;
  - He hoped that a line could be drawn under the issues and that in future all parties can behave with dignity and respect towards each other;

- His dyslexia can have a profound effect on his behaviour; and
- He still has a lot to offer the community and will continue to the best of his abilities to serve his fellow parishioners.

- 3.117 The appeals tribunal found that there was considerable antipathy between the Councillor and some of his colleagues on the Parish Council, and others in public life including some Members of the District Council. This has led to the Councillor making a number of claims that others have breached Codes of Conduct, none have which has been found to be substantiated.
- 3.118 The tribunal also found that a dyslexic condition did not excuse the Councillor's actions in the particular circumstances of this case. It was also found that there is a great deal of written material put into the public arena by the Councillor and others which do nothing to foster good relations and run the risk of resulting in ever deteriorating relationships.
- 3.119 The appeals tribunal was concerned that the relationships which gave rise to the present case appear still to be damaged. All concerned were urged to make efforts to understand each other's positions and to work together, using mediation and mentoring, to overcome the present disharmony which is damaging relationships and serving no useful purpose.
- 3.120 In considering the sanction, the tribunal considered that there had been a breach of the Code which caused harm to others, and that there was bullying and unsubstantiated allegations of corrupt practice against persons in public life. The impact of such actions is serious and inherently harmful.
- 3.121 The Councillor's actions fell short of the threshold on which disqualification was upheld in two previous cases, however they did correspond to those of a case in which the sanction was altered from disqualification to suspension for six months. The appeals tribunal considered that the decision of the Standards Committee was reasonable, proportionate and sustainable. The appeals tribunal therefore dismissed the Councillor's appeal.

#### Tendring District Council

- 3.122 The Councillor appealed against the Standards Committee's decision to suspend him for three months for a failure to comply with paragraph 2(b) of the Code of Conduct.
- 3.123 The Appeals tribunal was not required to consider whether the Councillor was in breach of the Code of Conduct and was satisfied that the evidence very clearly demonstrated a breach of this provision.
- 3.124 The Councillor argued that three months suspension was disproportionate and unrelated to the actual findings against him, for the following reasons:
- It had not been alleged that he had bullied the planning officer – this was an interpretation by the Hearings Sub-Committee;
  - The incident was an isolated incident of bad behaviour;
  - He had apologised;
  - He had offered to have suitable training and promised to abide by the Code in future; and

- Since September 2006 there had been no formal complaint made about him.

- 3.125 The tribunal noted the conclusion of the Hearings Sub-Committee that: 'During the incident a relatively junior officer had been verbally abused in such a way that other officers could hear and that apparently encouraged a member of the public to verbally abuse him in a similar manner'. The tribunal shared the view of the Hearings Sub-Committee that this was a serious incident and even if isolated it was of such severity that a sanction ought to be imposed.
- 3.126 The tribunal was satisfied that a period of suspension was the appropriate sanction to reflect to the Councillor the severity of the matter and to uphold and improve the standard of conduct of Councillors.

#### Middlesbrough Council

- 3.127 The Councillor appealed against the Standards Committee's finding that she had failed to comply with paragraphs 3(1), 5 and 6(b)(i) of the Council's Code of Conduct, and the sanction imposed, which was suspension for two months.
- 3.128 The complaint arose from an earlier complaint by the complainant in relation to waste collection services at her home. The complaint was heard by the Council's Complaints and Appeals Committee, at which both the complainant and the Councillor were present. The complainant submitted a further complaint in relation to the Councillor's conduct at that meeting and in the days following that meeting in respect of a series of postings by the Councillor on the forum of the Middlesbrough Evening Gazette. It is the allegations in the subsequent complaint that led to these proceedings.
- 3.129 The Councillor argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym of 'Indie'. However, taking the contents of the posting on the Evening Gazette forum as a whole the appeals tribunal concluded that the Councillor did give the impression that she was acting in the role of a Councillor and thus representing the Council.
- 3.130 The tribunal then considered whether the Councillor failed to treat the complainant with respect. The Councillor chose to take the issue to a very public blog-site, run by the local newspaper. It was inappropriate for someone with a valid and accepted complaint, which had been taken seriously by the Council, to be subjected to public ridicule and demeaning statements on a public website by a Member of that Council. The tone of the Councillor's postings was derogatory and disparaging to the complainant, including references to her as 'the wheelie bin woman'. The Councillor's postings also triggered off abusive responses directed at the complainant from other people. The tribunal therefore concluded that the Councillor had failed to treat the complainant with respect, contrary to paragraph 3(1) of the Code of Conduct.
- 3.131 The tribunal then considered whether the Councillor had brought her office or authority into disrepute. The tribunal considered that the way that the Councillor had behaved was not that expected of a Councillor and would diminish the office of Councillor. It therefore concluded that the Councillor had brought the office of Councillor into disrepute in breach of paragraph 5 of the Code of Conduct.

- 3.132 The appeals tribunal felt that by implication using a Council computer for such purposes would constitute a breach of paragraph 6(b)(1) of the Code of Conduct. However, this was a technical breach and in itself not significant.
- 3.133 The appeals tribunal felt that this was a case where there was a fairly serious breach of the Code of Conduct. The tribunal was presented with documents relating to three previous occasions on which the Councillor was found to have breached the Code. It was clear that she had not learnt from these previous occasions and the appeals tribunal therefore considered that the two month suspension imposed by the Standards Committee was appropriate.
- 3.134 The tribunal decided to impose an additional sanction of the requirement for training on the Code of Conduct to ensure that the Councillor fully understands the Code and so that any misconceptions she currently has are addressed.
- 3.135 **This case highlights the need for Members to be aware that the Code of Conduct applies when they are acting, claiming to act, or giving the impression they are acting in their official capacity.**

North West Leicestershire District Council and Ellistown and Battleflat Parish Council

- 3.136 The Councillor appealed against the determination by the Standards Committee that he had failed to comply with paragraphs 3(1) and 5 of the Council's Code of Conduct and the sanction which was to require him to:
- (a) send a letter of apology to the complainant; and
  - (b) undergo one to one training on the Code of Conduct.
- 3.137 The Standards Committee found as a fact that during a public question and answer session of a meeting of the Parish Council, an exchange took place between the Councillor and the complainant which amounted to a breach of paragraphs 3(1) and 5 of the Code. The Standards Committee made no findings of fact as to what was said by the Councillor in the exchange, nor did it provide any reasoning as to why what was said amounted to a failure to comply with these paragraphs of the Code.
- 3.138 The substance of the Councillor's grounds of appeal was that no exchange amounting to a breach of the Code occurred. The appeals tribunal therefore found it necessary to proceed by way of re-hearing.
- 3.139 There was a dispute of fact as to whether the Councillor asked the complainant 'what are you doing here' at a Parish Council meeting. The appeals tribunal was not satisfied that that it is more likely than not that the Councillor did utter those words. The tribunal considered that it was inherently unlikely that he would have done so given the context in which the meeting was called and the efforts the Councillor had taken to advertise it.
- 3.140 It would also be surprising that if the words had been said, they were not recalled by a witness who said that she would have heard all that was said at the meeting. The tribunal did not doubt that the complainant heard the words 'what are you doing here' but the tribunal considered that this belief arose from a misunderstanding as to what was said in the context of a brief encounter in a difficult meeting.

- 3.141 The tribunal attached little weight to the evidence of another witness who provided some support for the words being used by the Councillor. Her version of the alleged words was not consistent with the complainant's recollection, and she claimed that the Councillor had sought to cut the complainant off. The complainant's evidence was that the Councillor's comment came at the end of the exchange and he made no complaint that any attempt was made to prevent him speaking.
- 3.142 The appeals tribunal was not satisfied that the conduct which the Standards Committee determined amounted to a failure to follow the Code did in fact occur. Therefore, the appeals tribunal found that the Councillor did not breach the Code, and rejected the finding of the Standards Committee.
- 3.143 **This case highlights the importance of making findings of fact during the hearings process, and considering evidence from both the Investigator and the subject Member (and their witnesses) where there is a significant disagreement about the facts. The Standards Committee Procedure Rules set out the stages that will be followed by the Hearings Sub-Committee in conducting a hearing, which includes making findings of fact.**

Boston Borough Council

- 3.144 The Councillor appealed against the Standards Committee's finding that the Councillor had failed to follow paragraphs 3(1) and 5 of the Code of Conduct.
- 3.145 The appeals tribunal agreed to take new evidence into account from the Councillor that:
- (a) the e-mail which was the subject of the complaint was written on the same day that she received news of her cancer; and
  - (b) the complainant had 'fallen for her'.
- 3.146 The appeals tribunal determined that the Councillor did not fail to follow the provisions of the Code because:
- the evidence which was before the Standards Committee did not support its finding that the Councillor had, at the material time been acting in her capacity as a Councillor; and
  - the e-mails which passed between the Councillor and the complainant contained a mixture of personal and business issues. The e-mail exchange which led to the complaint was related to a website which is not produced or sanctioned by the Council.
- 3.147 The tribunal was concerned, however, that the Councillor did not discourage the complainant in intermixing personal and business issues. If she had done so, the complaint may not have arisen. The tribunal therefore recommended that a more cautious and transparent approach be adopted in future.
- 3.148 Had the appeals tribunal found that the correspondence did relate to Council business, the Standards Committee's finding that the Councillor had brought her office or authority into disrepute would not be shared by the tribunal. In the Livingstone case, Collins J indicated that it was 'important to understand the appellant's frame of mind when confronted...' The Councillor in this case was confronted by an e-mail which she reasonably construed as calling her a liar, which warrants a robust response. In addition, she had just been diagnosed with cancer, which explains the apparent lack of reflection in the use of language.



- 3.149 In Livingstone, Collins J also said ‘It seems to me that the expression [“in performing his functions”] should be construed so as to apply to a Member who is using his position in doing or saying whatever is said to amount to misconduct’. The Councillor in this case was not using her position in responding to the complainant.
- 3.150 The tribunal also determined that it would be a disproportionate response to interfere with the Councillor’s Article 10 (freedom of expression) rights on the basis of a single expletive in a private e-mail responding to an accusation of dishonesty.
- 3.151 Therefore, the tribunal overturned the finding of the Standards Committee.

#### London Borough of Hillingdon

- 3.152 The Councillor appealed against the decision of the Standards Committee that he had failed to follow paragraphs 3(1) and 5 of the Code of Conduct when he used the word ‘corrupt’ against Conservative Members at a full Council meeting.
- 3.153 In this appeal by way of re-hearing from that decision the appeals tribunal determined that the Councillor did fail to follow the provisions of the Code.
- 3.154 The tribunal heard evidence from Councillors as well as an officer and the public. A number of witnesses gave evidence that they could not recall the Councillor using the word corrupt. Others said they had heard it. One witness recalled the comment ‘You’re all corrupt’ being made by the Councillor as a throwaway remark as he was being heckled.
- 3.155 The Interim Head of Democratic Services who had been responsible for keeping a record of the meeting recalled the Councillor describing Conservative Councillors as corrupt. The tribunal was particularly impressed by this evidence which it found to be impartial, credible and compelling.
- 3.156 The appeals tribunal was satisfied that the Councillor, under the pressure of barracking and his own strong feelings about the behaviour of the majority group, inadvertently referred to that group as corrupt.
- 3.157 The tribunal was satisfied that this was a throwaway remark made without malicious intent. However, it was said in a full Council meeting at which Councillors, officers and members of the public were present. The tribunal considered that by making this remark, the Councillor had failed to treat his fellow Councillors with respect, and by making an unjustified claim that the majority group of the Council was corrupt he brought the authority itself into disrepute.
- 3.158 The appeals tribunal upheld the finding of the Standards Committee that there was a breach of the Code of Conduct. The tribunal shared the view of the Standards Committee that it was appropriate to impose no sanction with respect to this conduct.

#### Waverley Borough Council and Alford Parish Council

- 3.159 The Councillor appealed against the Standards Committee’s finding that she had failed to comply with paragraph 9 of the Code of Conduct by failing to declare a personal interest at a meeting. She also appealed against the action which the

Standards Committee took in the light of the failure to follow the provisions of the Code. The Standards Committee felt that no sanction was appropriate.

- 3.160 Firstly, the tribunal considered the status of the meeting, and whether it had been formally and correctly constituted. The tribunal concluded that it was a correctly constituted meeting of the Council to discuss Council business because:
- The notice of the meeting had the name and designation of the Chairman at the bottom as the person calling the meeting, and it was displayed on official parish notice boards;
  - The notice clearly indicates that the substance of the meeting is for the Council 'to discuss and hear residents' opinions'. Inclusion of the words 'to discuss' the application makes it clear to the public that this meeting was to conduct the business of the Council rather than have a public, non-council led meeting;
  - No resolution was passed in order to allow the Chairman to convene a non-council led public meeting;
  - The Chairman and Parish Clerk were seated at a table at the front of the hall with the Councillors sat in a 'U' shape either side. Councillors also responded to questions from the public, giving the impression that this was a meeting discussing Council business; and
  - The notice of the meeting gave sufficient notice in accordance with the Local Government Act 1972.
- 3.161 The tribunal then considered whether the Councillor should have declared an interest at this meeting. The Councillor admits she had a personal interest in the planning application and that she had on previous and subsequent occasions declared this.
- 3.162 The Councillor stated that she did not declare a personal interest at this meeting as she considered that the meeting was a non-council led public meeting and one that did not require a declaration of interest. The minutes of this meeting show that no declarations of interest were sought, offered or recorded for any Councillor present.
- 3.163 The Councillor confirmed in her representations that she was at the meeting in her capacity as a Councillor. In the tribunal's view, the way she conducted herself at the meeting, including answering a question from a member of the public, further enforces this. In the minutes, there was differentiation between statements made by Councillors and those made by the public.
- 3.164 The appeals tribunal therefore concluded that the Councillor should have declared a personal interest.
- 3.165 The tribunal recommended that , whilst it makes no finding that the Councillor has a personal and prejudicial interest it would advise her to seek guidance whether this may be the case. It also noted that, given the size of the proposed development and its implications for the local community, declarations of interest might have been appropriate from other Councillors present at that meeting.
- 3.166 The appeals tribunal upheld the finding of the Standards Committee that the Councillor had breached paragraph 9 of the Code of Conduct. The tribunal accepted that the Councillor had not intentionally failed to make a disclosure, and the fact that the Chairman of the Parish Council had not invited declarations of

interest meant there was no prompt for Councillors to make such a declaration and supports the content that those present had not given thought to this issue.

- 3.167 The appeals tribunal considered that the decision by the Standards Committee not to impose a sanction was proportionate and it was therefore upheld.
- 3.168 **In Leeds, at all meetings of the Council, the Executive Board, Council Committees and Sub-Committees, Members are asked whether they have any declarations of interest as a standing item on the agenda.**
- 3.169 **The Case Review 2007 states that ‘Members are not covered by the requirement to declare interests at informal meetings, as it only applies to formal meetings of the authority, its executive or its committees or sub-committees. However, paragraph 5(a) of the Code, which prevents Members from using their position improperly, applies at all times. A Member who uses pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest will probably fail to comply with paragraph 12(1)(c) of the Code. This is because they will have been improperly seeking to influence a decision.’**

#### **4.0 Implications For Council Policy And Governance**

- 4.1 There are no implications for council policy.
- 4.2 By continually monitoring decisions made by the Adjudication Panel and the implications for Leeds, the Standards Committee is fulfilling its terms of reference by keeping the codes and protocols of the Council under review.
- 4.3 By identifying problem areas the Standards Committee are also able to improve the training provided for Members on conduct issues, and maintain good conduct in the Council.

#### **5.0 Legal And Resource Implications**

- 5.1 There are no legal or resource implications to noting this report.

#### **6.0 Conclusions**

- 6.1 This report summarises the case tribunal decisions that have been published by the Adjudication Panel for England since the last Committee meeting. The possible lessons to be learnt for Leeds City Council are highlighted in bold at the end of each summary.

#### **7.0 Recommendations**

- 7.1 Members of the Standards Committee are asked to note the latest decisions of the Adjudication Panel’s case tribunals, and consider if there are any lessons to be learned for Leeds; and
- 7.2 Members of the Standards Committee are also asked to receive reports summarising the decisions of the Adjudication Panel for England at every Standards Committee meeting, rather than on a 6-monthly basis, due to the number of decisions being published.

## Background Documents

- APE0409, Councillor Buchanan of Somerset County Council, 31<sup>st</sup> March 2009
- APE0415, Councillor Slade of Maltby Town Council, 30<sup>th</sup> April 2009
- APE0417, Councillor Buchanan of Somerset County Council, 13<sup>th</sup> July 2009
- APE0418, Councillor Byrne of Compton Bishop Parish Council (appealing decision of Sedgemoor District Council), 21<sup>st</sup> April 2009
- APE0419, Councillor Boughton of Dartmouth Town Council, 27<sup>th</sup> May 2009
- APE0420, Councillor Wicking of West Somerset District Council, 3<sup>rd</sup> June 2009
- APE0421, Councillor McTigue of Middlesbrough Council (appealing decision of same), 29<sup>th</sup> April 2009
- APE0422, Councillor Balbirnie of Tendring District Council (appealing decision of same), 24<sup>th</sup> April 2009
- APE0423, Councillor Gamble of Ellistown and Battleflat Parish Council (appealing decision of North West Leicestershire District Council), 29<sup>th</sup> May 2009
- APE0424, Councillor Chegwyn of Gosport Borough Council, 6<sup>th</sup> July 2009
- APE0425, Councillor Cox of London Borough of Hillingdon (appealing decision of same), 23<sup>rd</sup> June 2009
- APE0427, Councillor Mason of Needham Market Town Council, 21<sup>st</sup> July 2009
- APE0428, Councillor Dorrian of Boston Borough Council (appealing decision of same), 17<sup>th</sup> June 2009
- APE0429 – 0434, Former Councillor Bradley and Councillors Pound, Davies, Glaze, Newbould and Pope of Ludlow Town Council, 30<sup>th</sup> July 2009
- APE0440, Councillor Ames of Alford Parish Council (appealing decision of Waverley Borough Council), 12<sup>th</sup> August 2009

(All above case tribunal decisions available at:

<http://www.adjudicationpanel.tribunals.gov.uk/Public/Decisions.aspx>)



Originator: Laura Ford

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**Report of the Assistant Chief Executive (Corporate Governance)**

**Standards Committee**

**Date: 15 October 2009**

**Subject: Standards Committee Work Programme**

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**Electoral Wards Affected:**

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**1.0 Purpose Of This Report**

1.1 To notify Members of the Committee of the work programme for the remainder of the municipal year and to seek comments from the Committee regarding any additional items.

**2.0 Background Information**

2.1 The work programme provides information about future items for the Standards Committee agenda, when reports will be presented to the Committee and who the responsible officer is.

**3.0 Main Issues**

3.1 The work programme for the remainder of the municipal year 2009/10 is attached at Appendix 1.

**4.0 Implications For Council Policy And Governance**

4.1 There are no implications for Council policy.

4.2 By ensuring the codes and protocols of the Constitution are reviewed and fit for purpose, the Standards Committee is supporting the Council's governance arrangements.

## **5.0 Legal And Resource Implications**

5.1 There are no legal and resource implications.

## **6.0 Conclusions**

6.1 The work programme is attached at Appendix 1 for the Committee's information.

6.2 The work programme contains information about future agenda items for the Committee.

## **7.0 Recommendations**

7.1 Members of the Committee are asked to note the work programme and advise officers of any items they wish to add.

## STANDARDS COMMITTEE - WORK PROGRAMME 2009/10

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES
<b>Meeting date: 16<sup>th</sup> December 2009</b>		
Standards for England Annual Assembly	To receive a report on the recent Standards Board Annual Assembly, and feedback from those Members of the Committee who attended.	Corporate Governance Officer Laura Ford
Standards Committee Media Protocol	To consider the annual review of the Standards Committee Media Protocol.	Principal Corporate Governance Officer Kate Sadler
Standards Committee Communications Plan	To consider a report reviewing the Standards Committee Communications Plan including any proposals for amendment.	Corporate Governance Officer Laura Ford
Standards Committee Half Year Progress Report	To receive a report of the Assistant Chief Executive (Corporate Governance) on the work completed by the Standards Committee in the last six months to be reported to the Corporate Governance and Audit Committee in February 2010.	Corporate Governance Officer Laura Ford
Ethical Audit Action Plan – HR Actions Update	To receive a report updating Members on the HR Actions from the Ethical Audit Action Plan, including the Staff Survey and the 360 Degree Managers' Appraisals.	Head of Human Resources Dave Almond
Standards for England Public Perceptions of Ethics	To receive a report advising Members of the findings of a research report recently published by Standards for England tracking public perceptions of ethics in local government.	Corporate Governance Officer Laura Ford
Review of Local Assessment Procedures	To receive a report providing details of the outcomes of the review of the Local Assessment procedures (including notifying subject Members of the existence of a complaint).	Senior Corporate Governance Officer Amy Kelly

**STANDARDS COMMITTEE - WORK PROGRAMME 2009/10**

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES
Adjudication Panel Annual Report 2008/09	To receive a report advising Members of the Committee of the contents of the Adjudication Panel's Annual Report for the year ending 31 <sup>st</sup> March 2009.	Corporate Governance Officer Laura Ford
Standards for England Annual Review 2008/09	To consider a report outlining the contents of the Standards Board for England Annual Review 2008/09.	Corporate Governance Officer Laura Ford
Code of Corporate Governance	To receive a report asking the Committee to consider proposed amendments to the Code of Corporate Governance.	Senior Corporate Governance Officer Emily Inman
Adjudication Panel Decisions/Notable Cases	Regular report detailing the most recent Adjudication Panel decisions and any other notable standards cases.	Corporate Governance Officer Laura Ford
Code of Practice for the Determination of Planning Matters	To receive an annual report outlining whether the arrangements set out in the Code have been complied with and any proposals for amendment in the light of any issues that have arisen throughout the year, and a review of the updated LGA Guidance on 'Probity in Planning'.	Chief Planning Officer Phil Crabtree
Enforcement of Local Codes and Protocols	To receive a report recommending the cessation of direct enforcement of the Local Codes, and subsequent amendments to the Local Codes and the Standards Committee Procedure Rules.	Principal Corporate Governance Officer Kate Sadler
Outcome of an Investigation into a Leeds City Council Member	To receive a report notifying Members of the Standards Committee of the outcome of a recent investigation into the conduct of a Leeds City Councillor, which was carried out by an Ethical Standards Officer from Standards for England.	Senior Corporate Governance Officer Amy Kelly



**STANDARDS COMMITTEE - WORK PROGRAMME 2009/10**

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES
<b>Meeting date: 17<sup>th</sup> February 2010</b>		
Draft Standards Committee Annual Report 2009/10	To seek Members' input on content of the Standards Committee annual report 2009/10. The report provides proposals and suggestions for content, and a draft report.	Corporate Governance Officer Laura Ford
Annual report on the Monitoring Officer Protocol	The Monitoring Officer will report to the Standards Committee regarding whether the arrangements set out in the Protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.	Senior Corporate Governance Officer Amy Kelly
Standards Committee Training Plan	To receive a report reviewing the Standards Committee training plan, and seeking the Committee's approval of any amendments to the plan.	Corporate Governance Officer Laura Ford
Local Assessment Progress Report	To receive a six-monthly progress report in relation to Local Assessment.	Senior Corporate Governance Officer Amy Kelly
Review of Effectiveness of Standards Committee	To receive a report considering the effectiveness of the Standards Committee.	Head of Governance Services Andy Hodson
Adjudication Panel Decisions/Notable Cases	Regular report detailing the most recent Adjudication Panel decisions and any other notable standards cases.	Corporate Governance Officer Laura Ford
<b>Meeting date: 22<sup>nd</sup> April 2010</b>		
Final Standards Committee Annual Report 2009/2010	To seek Member's approval for the final draft of the Standards Committee Annual Report 2009/2010.	Corporate Governance Officer Laura Ford

**STANDARDS COMMITTEE - WORK PROGRAMME 2009/10**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>RESPONSIBLE OFFICER/NOTES</b>
Adjudication Panel Decisions/Notable Cases	Regular report detailing the most recent Adjudication Panel decisions and any other notable standards cases.	Corporate Governance Officer Laura Ford
Code of Practice for the Determination of Licensing Matters	To receive a report outlining whether the arrangements set out in the Code have been complied with and will include any proposals for amendment in light of any issues that have arisen throughout the year.	Section Head Licensing and Enforcement Gill Marshall
Standards Committee Procedure Rules	The Monitoring Officer will report 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. 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.	Principal Corporate Governance Officer Kate Sadler
Parish Council Annual Audit 2009	To consider a report on the results of the Parish Council Annual Audit and proposals for addressing these results.	Senior Corporate Governance Officer Amy Kelly

**STANDARDS COMMITTEE - WORK PROGRAMME 2009/10**

ITEM	DESCRIPTION	RESPONSIBLE OFFICER/NOTES
<b><u>Unscheduled Items</u></b>		
Officer Code of Conduct	Approval of a revised Leeds City Council Officer Code of Conduct following receipt of the Model Code. <sup>1</sup>	Chief Officer (Human Resources) Lorraine Hallam
Member Code of Conduct	Approval of a revised Leeds City Council Member Code of Conduct following receipt of the Model Code.	Principal Corporate Governance Officer Kate Sadler
Protocol for Elected Members/Officer Relations and Protocol for Elected Members / Education Leeds Relations <sup>2</sup>	The Monitoring Officer will report to the Standards Committee regarding whether the arrangements set out in the Protocols have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year. The Monitoring Officer will also report on any amendments made to the various codes of practice referred to in the Protocols which have been made since the last report.	Senior Corporate Governance Officer Amy Kelly
Increased Interaction between the Standards Committee and the Council's Leadership	To receive a report presenting proposals to increase interaction between the Standards Committee and the Council's Leadership.	Corporate Governance Officer Laura Ford

<sup>1</sup> Consultation on the new officer Code of Conduct closed on 24<sup>th</sup> December 2008. It is anticipated that a further consultation document will be released in 2010.

<sup>2</sup> To be submitted after the new Member Code has been released

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