

# **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>

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<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.

## *Standards Committee Procedure Rules*

“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

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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.

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- 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

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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

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- 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.

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- 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-

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

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- 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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## **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.

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- 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.

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- 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

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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.