



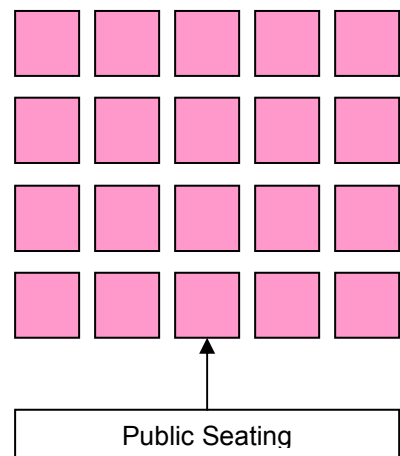
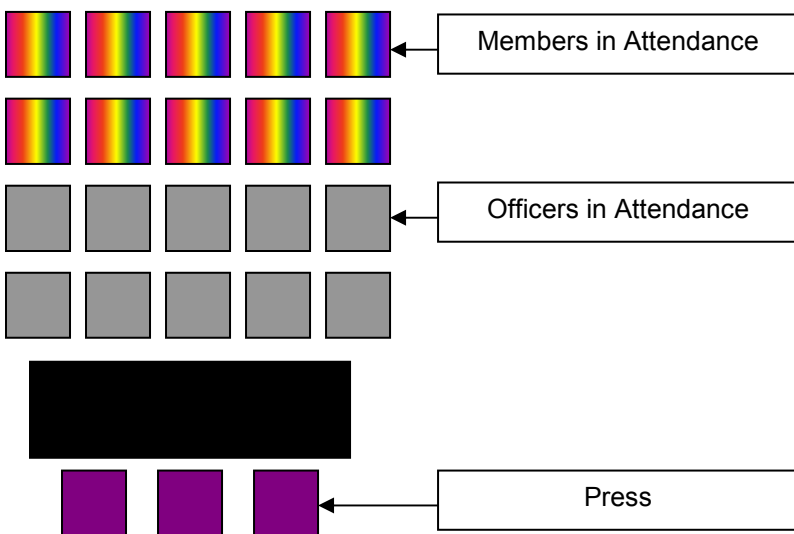
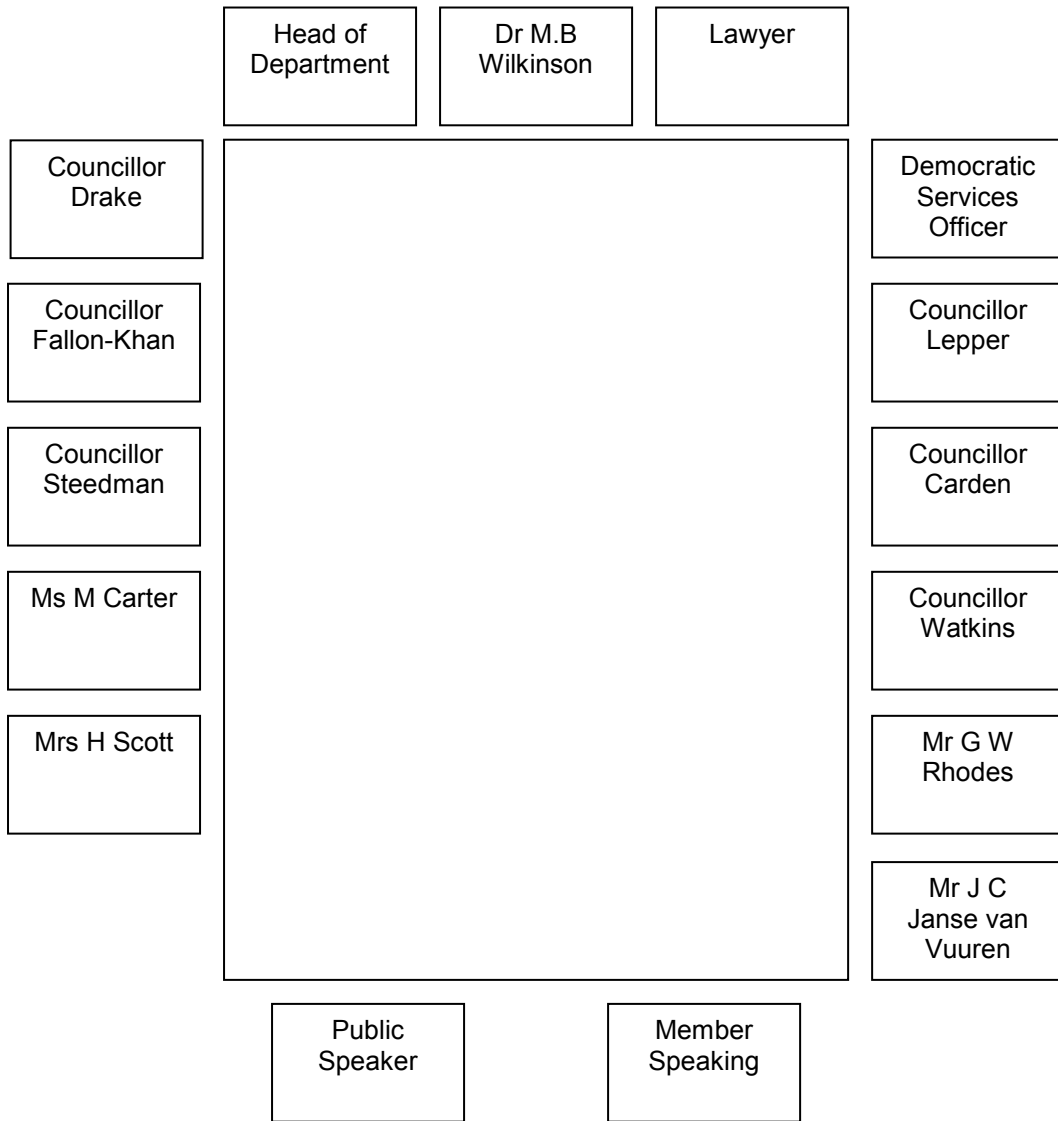
**Brighton & Hove
City Council**

Standards Committee

Title:	Standards Committee
Date:	16 September 2008
Time:	5.00pm
Venue	Committee Room 1, Hove Town Hall
Members:	<p>Councillors: Carden, Drake, Fallon-Khan, Lepper, Steedman and Watkins</p> <p>Independent Members: Dr M Wilkinson (Chairman), Ms M Carter and Mrs H Scott</p> <p>Rottingdean Parish Council Representatives: Mr J C Janse van Vuuren and Mr G W Rhodes</p>
Contact:	<p>Penny Jennings Senior Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk</p>

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Democratic Services: Meeting Layout



AGENDA

13. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

14. MINUTES SPECIAL MEETING

1 - 4

Minutes of the meeting held on 23 May 2008 (copy attached)

15. MINUTES OF THE PREVIOUS MEETING

5 - 10

Minutes of the meeting held on 10 June 2008 (copy attached).

16. CHAIRMAN'S COMMUNICATIONS

17. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 8 September 2008)

No public questions received by date of publication.

18. COMPLAINTS UPDATE

11 - 16

Report of the Director of Strategy & Governance (copy attached)

Contact Officer: Brian Foley

Tel: 01273 291229

Ward Affected: All Wards

STANDARDS COMMITTEE

19. THE ROLE AND MAKE-UP OF STANDARDS COMMITTEES 17 - 42

Report of the Director of Strategy & Governance (copy attached)

Contact Officer: Liz Woodley *Tel:* 29-1509

Ward Affected: All Wards

20. STANDARDS BOARD GUIDANCE AFFECTING CHANGES TO THE PROCEDURES FOR LOCAL ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS 43 - 76

Report of the Director of Strategy & Governance (copy attached)

Contact Officer: Brian Foley *Tel:* 01273 291229

Ward Affected: All Wards

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065, email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Monday, 8 September 2008

**BRIGHTON & HOVE CITY COUNCIL
STANDARDS COMMITTEE – SPECIAL MEETING****5.00PM – 23 MAY 2008****HOVE TOWN HALL****MINUTES**

Present: Councillors: Carden, Mrs Drake, Fallon-Khan, Kitcat, Lepper and Watkins.

Independent Members: Dr M B Wilkinson (Chairman)

Rottingdean Parish Council Representatives: Mr G Rhodes and Mr Janse van Vuuren.

PART ONE**56. PROCEDURAL BUSINESS****56a Declarations of Interest**

56.1 There were none.

56b Exclusion of Press and Public

56.2 The Committee considered whether the press and public should be excluded from the meeting during the consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present, there would be disclosure to them of confidential or exempt information as defined in Schedule 12A, Part 5A, Section 100A(4) or 100 1 of the Local Government Act 1972 (as amended).

56.3 **RESOLVED** - That the press and public be not excluded from the meeting.

57. NEW ARRANGEMENTS, RELATIVE TO STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008 FOR DEALING WITH COMPLAINTS MADE AGAINST MEMBERS OF THE COUNCIL, INFORMATION ON INFORMAL HEARINGS/PUBLIC INQUIRIES

57.1 The Committee considered a report of the Director of Strategy and Governance setting out and requesting Members' agreement to the new

arrangements and procedures for the local assessment of ethical standards complaints against Members (for copy of report and supporting annexes see minute book).

- 57.2 The Principal Solicitor tabled an errata sheet setting out errors in the Guidance issued by the Standards Board relative to the Local Assessment of Complaints. The action taken to remedy them was also set out (for copy see minute book). All that appeared necessary for the Appendix to the report relative to errors in the Guidance, was that in Section 4, Paragraph 32, the “not” needed to be deleted in the third sentence. It was explained that the Standards and Complaints Team had posted information on the Council’s website detailing the new arrangements and in “City News”, this also included information appertaining to any complaints made relative to Members of Rottingdean Parish Council.
- 57.3 The Principal Solicitor explained that arrangements to appoint additional Independent Members had been held in abeyance pro-tem as there was new guidance from the standards Board about standards Committees which ought to be considered by the Committee before any additional permanent independent persons were appointed.. Also, in its final form the recent regulations had indicated that in the event that Independent Members of the Committee could not be involved or were precluded from the assessment determination process ; it would be possible to call upon Members of other Standards Committees e.g. Fire Authority. In answer to questions of Councillor Watkins he explained that this would only be used when the Committee was unable to appoint an Assessment or Hearing Panel from its own Members and that the appropriate contacts would be put into place with neighbouring authorities in order for reciprocal arrangements to be put into place.
- 57.4 The Principal Solicitor explained that a further report would be submitted to a future meeting in order to consider the new guidance on standards committees and this would review matters such as the period for which Independent Members would be appointed to the Committee.
- 57.5 **RESOLVED:** -
- (1) That the Committee notes the correction of the errors in the original Guidance
 - (2) That Sections 1 to 6 which form the appendix to the report on Local Assessment of Complaints be amended accordingly to correct any errors which have arisen from using the initial version of the Guidance and that they be approved in that form ;
 - (3) That authority be given to the Director of Strategy and Governance (as Monitoring Officer) :
 - (l) to make the necessary amendments to the arrangements and procedures ; and

(ii) To exercise the power in the Regulations to make appointments to the Council's Standards Committee and Sub Committees of independent person(s) who serve on other authorities' Standards Committees.

[**Note:** These was all that appeared necessary relative to errors in the Guidance :

(a) No corrections are needed in relation to notification of the Parish Clerk, as mandatory rather than discretionary requirements to notify were included in the proposed procedures; and

(b) However, Section 4, Paragraph 32 requires the "not" to be deleted in the third sentence.

The meeting concluded at 5.30pm

Signed

Chairman

Dated this

day of

2008

BRIGHTON & HOVE CITY COUNCIL**STANDARDS COMMITTEE****5.00PM – 10 JUNE 2008****HOVE TOWN HALL****MINUTES**

Present: Councillors: Carden, Drake, Fallon-Khan, Lepper (OS), Steedman and Watkins.

Independent Members: Dr M B Wilkinson (Chairman)

Rottingdean Parish Council Representative: Mr Janse van Vuuren

Apologies were received from: Ms M Carter, Mrs H Scott and Mr G Rhodes of Rottingdean Parish Council.

PART ONE**ACTION****1. PROCEDURAL BUSINESS****1A. Declarations of Substitutes**

1.1 There were none.

1B. Declarations of Interest

1.2 There were none.

1C. Exclusion of Press and Public

1.3 The Committee considered whether the press and public should be excluded from the meeting during the consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present, there would be disclosure to them of confidential or exempt information as defined in Schedule 12A, Part 5A, Section 100A(4) or 100 1 of the Local Government Act 1972 (as amended).

1.4 **RESOLVED** - That the press and public be not excluded from the meeting.

2. MINUTES

2.1 **RESOLVED** – That the minutes of the meeting held on 18 March 2008 be approved and signed by the Chairman.

3. CHAIRMAN'S COMMUNICATIONS

3.1 The Chairman welcomed Councillors Fallon- Khan and Steedman to their first meeting of the new municipal year.

4. PUBLIC QUESTIONS

4.1 There were none.

5. WRITTEN QUESTIONS FROM COUNCILLORS

5.1 There were none.

6. FUTURE CHAIRING ARRANGEMENTS

6.1 The Principal Solicitor advised the Committee that the effect of the Local Government & Improvement in Health Act 2007 and the standards Committee (England) Regulations 2008 was that the Committee and its Sub Committees should always be chaired by one of the independent persons. Consequently it no longer would be appropriate to appoint a member of the council as Deputy Chairman.

6.2 The Chairman explained that notwithstanding that the new legislation effectively required that if appointed a Deputy Chairman should be an independent Member he was of the view that it would not be appropriate to appoint one formally at the present time. In the event that he was unable to attend arrangements could be put into place for one of the Independent Members to Chair the meeting in his stead. He welcomed the additional and different dimension and perspective that elected Council Members were able to give and considered that it was vital to work proactively with the Council. This had worked well in the past and it was his intention to continue in that manner.

6.3 The Chairman stated that it was his intention to continue to invite Councillor Drake, representing the majority Group on the Council and Councillor Lepper (OS) to Chairman's meetings. Both were past Deputy Chairmen and as such were able to give a valuable insight into the workings of the Council

6.4 **RESOLVED** – (1) That the position of Deputy Chairman remain vacant for the present, with one of the independent Members deputising in the event of the Chairman being unavailable.

(2) Councillors Drake and Lepper as a majority group member and (OS) respectively continue to be invited to attend Chairman's pre-meetings .

7. CONFIRMATION OF ADOPTION OF NEW CODE OF CONDUCT FOR MEMBERS

7.1 The Committee considered a report of the Director of Strategy and Governance setting out for the information ,particularly of those who were not Members of the Council details of the new constitution and the provisions in it relating to the standards Committee. The new constitution had taken effect at the Council's Annual General Meeting (AGM) of 15 May 2008 (for copy see minute book).

7.2 **RESOLVED** - That the contents of the report be noted.

8. CONFIRMATION OF ADOPTION OF NEW CODE OF CONDUCT FOR MEMBERS

8.1 The Committee considered a report of the Director of Strategy and Governance advising relative to actions taken to revise the Local Code of Conduct for Members which had been introduced in September 2007 , in order to meet the requirements for executive arrangements (for copy see minute book) .

8.2 **RESOLVED**- That the contents of the report be noted.

9. PLANNED TRAINING FOR MEMBERS OF STANDARDS COMMITTEE

9.1 The Committee considered a report of the Director of Strategy and Governance updating Members on training proposals for the forthcoming municipal year and seeking their approval of them (for copy see minute book).

9.2 Councillor Watkins sought confirmation regarding whether the proposed training would be made available to co-optees and others besides elected Members . The Standards and Complaints Manager explained that training would available to all co-opted Members and Members of Rottingdean Parish Council in appropriate cases .

9.3 **RESOLVED** – (1) That the training initiatives proposed for 2008 /09 be agreed and noted ;

(2) That the Committee engage with the Member Development Working Group to provide seminars to be made available to all elected members and co-opted members with voting rights, these to focus on developing their awareness of current equalities legislation and good practice ;

(3) That further training be offered to all Members of Standards Committee on the process of Local Assessment of Complaints .

(An event to be organised along similar lines to that held in March 2008) ;

(4) That officers and Members who had expressed an interest in training aimed at developing awareness of Mediation be invited to attend seminars being organised for ACeS South East Members ;

(5) That the Chairman, Dr M B M Wilkinson, Councillor Steedman and the Standards and Complaints Manager would be attending the Seventh Annual Assembly of standards Committee on 13 - 14 October 2008 .

10. COMPLAINTS UPDATE

10.1 The Committee considered a report of the Director of Strategy and Governance summarising information on complaints about Member conduct administered under (a) the new arrangements as defined by the Standards Committee (England) Regulations 2008 which had come into effect with effect from 8 May 2008 and (b) the previous arrangements which had existed prior to that date .

10.2 Members referred to the inordinate amount of time taken by the Standards Board in determining Case SBE 15053.06. The Principal Solicitor explained that in that case he believed delays had arisen as a result of the Standards Board awaiting the outcome of due legal process and the subsequent appeal . The Chairman stated that issues relative to unacceptable delays had been raised with the Board in the past and with the imposition of the local arrangements the emphasis would be on a measured approach, but one which facilitated a decision being made and did not give rise to undue delays .

10.3 **RESOLVED** - That the content of the report be noted

11. ITEMS TO GO FORWARD TO COUNCIL

11.1 There were none.

12. VOTE OF THANKS TO JOHN HEYS : PRINCIPAL SOLICITOR

12.1 Prior to closing the meeting the Chairman, Dr M B Wilkinson wished to place on record his sincere thanks and those of the Committee to John Heys , Principal Solicitor who was due to leave the Council at the end of July . His calm, sensible and thoughtful advice and support relative to standards and other issues had been invaluable and he would be greatly missed. Councillors Drake, Carden, Lepper and Watkins added their own personal messages as did Mr Janse van Vuuran on behalf of Rottingdean Parish Council. All other Members were unanimous in supporting the Chairman's Vote of Thanks and in extending to Mr Heys their heartfelt good wishes for the future .

The meeting concluded at 5.35 pm

Signed

Chairman

Dated this

day of

2008

Subject: *Complaints Update*
Date of Meeting: **16 September 2008**
Report of: *Director of Strategy and Governance*
Contact Officer: Name: *Brian Foley* Tel: **29-3109**
E-mail: *brian.foley@brighton-hove.gov.uk*
Wards Affected: All

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

This paper gives information about:

- 1.1 Complaints regarding Member conduct administered under new arrangements as defined by The Standards Committee (England) Regulations 2008 which came into effect on 08 May 2008.
- 1.2 Complaints dealt with under the corporate complaints procedures.

2. RECOMMENDATIONS:

- 2.1 The Standards Committee is asked to note the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Standard Committee (England) Regulations 2008 are derived from the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007. The regulations set out a framework for the operation of a locally based system for assessment, referral, investigation and hearing of complaints of member misconduct.
- 3.2 This paper summarises complaints dealt with under these regulations.
- 3.3 The Local Government Act 2000 requires the names of complainants and of Members about whom allegations have been made to be kept confidential.

4. SUMMARY OF COMPLAINTS ABOUT MEMBER CONDUCT

4.1 There have been four complaints dealt with under the new Standards Committee (England) Regulations 2008. These cases have been considered by an Assessment Panel of the Standards Committee. The complaints are from two members of the public and concern identical issues about the same two councillors.

4.1.1 Case Number **SCT047STDS**

Complainant: Member of the public

Date of complaint: 08 July 2008

Date of Assessment Panel : 14 August 2008

Allegation:

The complaints relate to representations made to the Planning Applications Sub-Committee. The complaint alleges the member has breached section 6(a) that *you must not use or attempt to use your position as a Member improperly to confer on, or secure for yourself or any other person an advantage or disadvantage*, and section 12(1), *that the member had a prejudicial interest in any business of the authority and failed to withdraw from the room or chamber where a meeting considering the business was being held.*

Decision of Assessment Panel:

Complaint to be investigated

4.1.2 Case Number **SCT048STDS**

Complainant: Member of the public

Date of complaint: 20 July 2008

Date of Assessment Panel : 14 August 2008

Allegation:

The complaints relate to representations made to the Planning Applications Sub-Committee. The complaint alleges the member has breached section 6(a) that *you must not use or attempt to use your position as a Member improperly to confer on, or secure for yourself or any other person an advantage or disadvantage*, and section 12(1), *that the member had a prejudicial interest in any business of the authority and failed to withdraw from the room or chamber where a meeting considering the business was being held.*

Decision of Assessment Panel:

Complaint to be investigated

4.1.3 Case Number **SCT049STDS**

Complainant: Member of the public

Date of complaint: 08 July 2008

Date of Assessment Panel : 14 August 2008

Allegation:

The complaints relate to a decision made by a Planning Applications Sub-Committee. The complaint alleges the member has breached sections

8(2)(a), 9(1), 10(1), and 12(1) of the Code of Conduct in that there was a personal and prejudicial interest which the member failed to declare and to withdraw from the room or chamber where the business of the meeting was being considered.

Decision of Assessment Panel:

An element of the complaint to be investigated

4.1.4 Case Number **SCT050STDS**

Complainant: Member of the public

Date of complaint: 08 July 2008

Date of Assessment Panel : 14 August 2008

Allegation:

The complaints relate to a decision made by a Planning Applications Sub-Committee. The complaint alleges the member has breached sections 8(2)(a), 9(1), 10(1), and 12(1) of the Code of Conduct in that there was a personal and prejudicial interest which the member failed to declare and to withdraw from the room or chamber where the business of the meeting was being considered.

Decision of Assessment Panel:

An elements of the complaint to be investigated

5.0 SUMMARY OF COMPLAINTS RECEIVED UNDER THE CORPORATE COMPLAINTS PROCEDURES

- 5.1 The Ombudsman received 93 complaints about the Council during 2007/08, a fall of 35 from the previous year.
- 5.2 That reduction mainly resulted from falls in complaints about Housing, down by 8 to 24, Planning down by 18 to 14, and Education down by 6 to 5. Other complaints were broadly in line with previous years figures. Complaints about Parking and Highways increased by 5 to 14.
- 5.3 At BHCC 15% of cases were resolved by Local Settlement which compares favourably to the national figure of 27%. Local Settlement is where an investigation is discontinued because the authority agrees to take action which the Ombudsman considers to be satisfactory to resolve the complaint. These investigations resulted in compensation payments amounting to £4000.
- 5.4 There were no findings of Maladministration and none of the complaints were dealt with by way of formal report finding Maladministration causing Injustice.
- 5.5 The Ombudsman considers that working relationships with the Council's complaints officers continue to be positive and professional. Average response times continue to decrease to 28.7 days, just outside the target response time of 28 days.

- 5.6 The Council received 1788 Stage One corporate complaints in 2007/08, down 289 from the previous year.
- 5.7 That reduction has occurred as a result in falls in complaints about City Clean, and Housing Benefits.
- 5.8 Complaints about Transport and Highways, Revenues, Housing Management, Repairs and Maintenance, Housing Needs have remained broadly consistent.
- 5.9 Complaints about Development Control have increased.

6. FINANCIAL & OTHER IMPLICATIONS:

6.1 Financial Implications:

There are no financial implications.

6.2 Legal Implications:

There are no legal implications.

6.3 Equalities Implications:

An Equalities Impact Assessment for complaints received under the new regulations is being carried out by the Standards and Complaints Manager to ensure members of the public are aware of the change in procedures and to make the service widely accessible.

6.3 Sustainability Implications:

There are no Sustainability Implications for this report.

6.4 Crime & Disorder Implications:

There are no Crime & Disorder implications for this report.

6.5 Risk and Opportunity Management Implications:

There are no issues that require immediate action. Two issues will require review:

- Training for members in operation of new assessment procedure (see report dated 10 June 2008)

- Ensuring disadvantaged communities have knowledge of and access to new complaint process (to be addressed in Equalities Impact Assessment)

6.6 Corporate / Citywide Implications:

This report is a measure of the quality of ethical governance for the City and openness of leadership within the Council

7. EVALUATION OF ANY ALTERNATIVE OPTION(S):

7.1 None required

8. REASONS FOR REPORT RECOMMENDATION:

8.1 To inform members of the Standards Committee of complaints made about alleged breaches of the members' Code of Conduct.

8.2 To ensure high quality ethical governance.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. None

Subject: *The Role and Make-up of Standards Committees*
Date of Meeting: **16 September 2008**
Report of: *Director of Strategy & Governance*
Contact Officer: Name: *Liz Woodley* Tel: **291509**
E-mail: *liz.woodley@brighton-hove.gov.uk*
Wards Affected: All

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The Standards Board for England (SBE) has recently issued guidance entitled 'The Role and Make-up of Standards Committees' which applies to all local authorities with Standards Committees. The report places the recently issued guidance before the Committee.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the contents of the guidance, and officers' comments.
- 2.2 That the Committee agree the action points shown in bold italics under each heading.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Council has a duty to take account of the guidance, which supplements the legislation and relevant regulations.
- 3.2 The report places the guidance before the Committee and indicates how the Council already deals with its contents or suggests what the Council might wish to do. This is done by setting out the text of the guidance with comments and action points added in italics – see the Appendix to the report.

4. CONSULTATION

- 4.1 There has been no consultation.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are none, save those associated with the appointment of a fourth independent person. These will need to be met from existing budgets.

5.2 Legal Implications:

These are addressed in the body of the report and Appendix.

Lawyer Consulted: Liz Woodley

Date: 12 August 2008

5.3 Equalities Implications:

There are no direct implications arising from the report.

5.4 Sustainability Implications:

There are no sustainability implications arising from the report.

5.5 Crime & Disorder Implications:

There are no direct implications arising from the report.

5.6 Risk and Opportunity Management Implications:

No formal risk assessment has been carried out in connection with the report.

5.7 Corporate / Citywide Implications:

There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. Guidance issued by the Standards Board for England.

Documents In Members' Rooms

None

Background Documents

None

APPENDIX

Guidance issued by the Standards Board for England on 17 July 2008, with comments and action points added in italics.

The Role and Make Up of Standards Committees

Contents

Introduction

Functions of standards committees

Size and composition

Independent members

Parish and town council representatives

Other members

Supporting standards committees

Operation of standards committees

Introduction

This guidance on the role and make-up of standards committees reflects the Standards Committee (England) Regulations 2008 (the regulations). The regulations are mandatory and this guidance must be taken into account by your authority. It is aimed primarily at members of standards committees and monitoring officers but will also provide a useful reference tool for all members and officers.

It applies to:

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

Members of parish and town councils may also find this guide useful. The Local Government Act 2000 says that your authority must set up a standards committee. The regulations set out the rules governing the size and composition of a standards committee and should be read alongside this guidance.

Throughout this guidance we use the term 'independent member' to describe members appointed by the authority under Section 53(4)(b) of the Local Government Act 2000, and Regulation 5 of the regulations. You may also like to consult our guidance **Local assessment of complaints**. You can contact the Standards Board for England on 0845 078 8181 or email enquiries@standardsboard.gov.uk

Comment: - *The guidance applies to the Council. The Council has set up a Standards Committee which currently comprises 6 Members of the authority, 2 Parish Councillors and 3 Independent Members, none of whom are Councillors or Officers of the Council, or any other body having a Standards Committee. At its meeting on 13 March 2008, full Council agreed that a fourth independent person be appointed. The appointment has been held in*

abeyance, pending guidance from the Standards Board. Now that the guidance has been published, it is appropriate to progress the appointment. The Council's written Constitution has already been amended to reflect the additional member.

Action point: - The Director of Strategy & Governance progress the appointment of a fourth Independent Member.

Functions of standards committees

The main role of a standards committee is to promote and maintain high standards of conduct throughout its authority. One of the aims of setting up a standards committee is to create a sense of 'ethical well-being' in the authority. The Standards Board for England believes there needs to be a culture of high standards in every authority. Each authority has the opportunity to reinforce its position as a leader in standards of conduct, setting an example to other bodies it works with, and to the community at large. Standards committees, and indeed monitoring officers, are at the heart of the standards framework. They promote, educate and support members in following the highest standards of conduct and ensuring that those standards are fully owned locally. Standards committees have a key role to play in creating an ethical organisation and setting an example for their councils. Indeed, creating and maintaining an ethical organisation is not just about adopting and enforcing the Code. It is also about relationships, both internally between members and authority staff, and externally with members of the public and other stakeholders. It is about how the authority relates to the community and other stakeholders, and improves the service it provides. Standards committees have the following functions:

Main functions

- to promote and maintain high standards of conduct for members
- to help members to follow the Code of Conduct

Specific functions

- to give the council advice on adopting a local Code
- to monitor the effectiveness of the Code
- to train members on the Code, or arrange for such training
- to assess and review complaints about members
- to conduct determinations' hearings
- to grant dispensations to members with prejudicial interests
- to grant exemptions for politically restricted posts

The functions set out in this section should be included in the committee's 'terms of reference'. Standards committees can also undertake other functions as they consider appropriate. The Audit Commission has recommended that authorities set up audit committees. The role of the standards committee should complement the role of the audit committee. While the audit committee should oversee the financial processes, standards committees should take the lead on promoting good ethical conduct. It is important that committees are clear about their roles and responsibilities, and that there are clear distinctions in their terms of reference. This will avoid confusion, disputes and possible duplication. If you change the terms of reference of your standards committee, you must send a copy of the amended terms of reference to us. We are happy for you to email this to us at enquiries@standardsboard.gov.uk

Comment: - *The functions of the Committee and its Panels are set out in Part 5.1 of the Constitution. These functions include all the main and specific functions set out above. The Council has delegated the following additional functions to the Committee -*

- (a) Responsibility for the overview and scrutiny of internal and external audit in so far as it relates to standards of conduct.*
- (b) Responsibility for the overview of the whistleblowing policy.*
- (c) At the request of the Governance Committee to review parts of the constitution and make recommendations to the Governance Committee and Council*
- (d) Receiving and considering reports or recommendations of the Monitoring Officer.*
- (e) Responsibility for the overview of complaints handling and Ombudsman investigations*
- (f) Supporting the Monitoring Officer in his/her role.*
- (g) Supporting the Chief Finance Officer in his/her role*

Adopting the Code of Conduct

Your authority must have adopted a local Code of Conduct by 1 October 2007, or as soon as possible after this date. In order to adopt a Code your standards committee must become familiar with the Model Code. Your local Code must include all of the provisions of the Model Code, and these cannot be changed. All of the provisions in the Model Code automatically apply, even if you do not adopt them all in your local Code. Your authority may also adopt extra provisions in its Code to suit local circumstances as long as those provisions are consistent with the Model Code. You can amend and readopt your local Code at any time as long as it still contains all of the mandatory provisions of the Model Code. We believe that all members should be judged by the same standards. If you add provisions to the Model Code, you should be aware that members will be assessed against these extra provisions. If you do add extra provisions, we advise you obtain legal advice to make sure these provisions can be enforced and do not breach any relevant law or regulation, such as the Human Rights Act. Standards committee members can act as examples to other members by supporting the adoption of the Code, and by discussing ethical issues widely with their colleagues. They should lead by

example in declaring the existence and nature of their interests at meetings, and by supporting and promoting attendance at training events. This will help keep the principles which govern the conduct of members and the Code at the centre of the authority's culture and values.

Comment: - *The current Code of Conduct for Members was adopted on 15 May 2008. It can be found in part 9.1 of the Constitution. It follows the wording of the national model code of conduct, although an extra provision has been added dealing with the voluntary notification to the Monitoring Officer of the membership of private clubs. All Members are made aware of the need to declare interests at meetings as there is a standing item in the preliminary part of all meeting agendas.*

Publicising adoption of the Code of Conduct

When your authority has adopted a Code of Conduct or a revised Code, the monitoring officer must publish a notice in one or more local newspapers. This notice should say that a Code has been adopted and that it is available for public inspection. If your council publishes its own paper and prints a notice in that paper, it must also print a notice in another local paper. The notice must say that it can be seen by members of the public at all reasonable hours. We would expect you to place the notice on your website, with links to your complaints' process and forms. Parish and town councils have the same duty as principal authorities to publish a notice in one or more local newspapers when they have adopted the Code. Your authority can help the parish and town councils in your area to do this. Advertising can be expensive, so bear in mind that one advertisement can publicise Codes for several authorities in your area, for example, several parish and town councils. If you decide to do this, the advertisement could simply list the authorities in the area that have adopted the Code and where it is available for the public to view. The advertisement should be placed in a publication covering all of the authority's area. Your authority can also advertise the Code on its website. But it must additionally publish its Code in one local newspaper, which excludes the newspaper in your own council. If you make amendments to your Code, you must send a copy of the Code you have adopted to the Standards Board for England. If you add provisions to the Model Code, you should highlight any changes before sending them to us. We are happy for you to email amended Codes to us at enquiries@standardsboard.gov.uk

Comment: - *A public notice was inserted into the Argus on 23 June 2008 following the adoption of the new Code of Conduct. A copy was sent to the Standards Board in the same month. The Code is accessible to the public through the Council's website, and at King's House. The responsibility for initial receipt of complaints about Members has recently transferred from the Standards Board to the Council and reference to this was made in the 23 June notice referred to above. A notice was also published on the website. The Council's approved assessment procedures include publicity provisions, in the following terms - "periodic, general awareness initiatives will be carried out by S & C to satisfy the requirement for updating/regular publicity about the Code complaints process."*

Training Members on the Code of Conduct

Standards committees are responsible for training members on matters relating to the Code of Conduct, or for arranging appropriate training to be provided. Training is an excellent way for your authority to set out the standards of conduct it expects from its members. The training should ensure that members know about the workings and implications of the Code, as they are required to sign an undertaking to comply with it. It would be good practice for standards committees to issue guidance notes or memos through their minutes to run alongside the Code. These could include guidance or protocols on local issues and an explanation of any extra provisions proposed to be added to the Code. This guidance could also be included in a members' handbook and placed on your website. If your authority is responsible for any parish or town councils, it must also make sure that training is available to members of those councils. You may want to consult county associations to see if they provide any training. We strongly encourage different tiers of local government to work together on ethical matters, particularly with training. This is because all members should know their rights and responsibilities, regardless of the type of authority. Standards committees may like to base the training around some examples of potential ethical misconduct. This will allow members to see some of the provisions in action. Case summaries of completed investigations into misconduct are available on our website at www.standardsboard.gov.uk. Alternatively, you can consult our *Case Review* publication which is also available on our website. Monitoring officers should be able to provide their standards committee with the training materials published by the Standards Board.

Comment: - *The Code of Conduct was covered in the induction programme for new Members following the May 2007 elections. In preparation for the adoption of the new code in September 2007, three briefing sessions were held, at different times of the day to maximise attendance. They were open to elected and co-opted Members. 27 of the Council's elected Members attended one of the sessions – the others were sent an information pack.*

Monitoring the effectiveness of the Code of Conduct

Standards committees need to monitor how effectively members are adhering to the Code of Conduct, the type of complaints received and how quickly these complaints are dealt with. This will help identify where problems are and what should be included in future guidance and training. Monitoring officers may provide overview reports to the committee highlighting these issues. Monitoring officers will also make quarterly and annual returns to the Standards Board for England on the operation of the Code in their authority and the standards framework locally. The Standards Board consulted authorities to determine how they will tell us that the local arrangements are working. We have designed a monitoring system based on what standards committees need locally. The system enables authorities to provide information to the Standards Board as simply as possible. Authorities will be

able to use the system locally for their own records, to keep standards committees informed of the authority's ethical activities.

Comment: - *The Director of Strategy & Governance submits regular reports to the Standards Committee on various aspects of compliance with the ethical standards provisions of the Local Government Act 2000. The Standards and Complaints Team is responsible for making the quarterly and annual returns to the Standards Board. The first return for the period 8 May to end of June 2008 was duly made within the 14 day period for returns.*

Giving standards committees a wider role

The Local Government Act 2000 allows your authority to give the standards committee extra functions to give them a wider governance role. Some standards committees do take on extra functions.

These may include:

- dealing with the protocol for members and authority employees' relations
- receiving reports on complaints procedures and/or reports from the Local Government Ombudsman or external auditors
- setting up the independent remuneration panel
- commenting on recommendations on members' allowances
- advising the council on the appointment of independent members

We believe that giving standards committees wider-reaching responsibilities is a positive step and will help promote confidence in local democracy. It will also provide a workload which is regular and interesting, and should in turn aid the recruitment and retention of independent members. Authorities should review their constitutions regularly, at least once every five years. A constitution should be a living document provided to members, available to the public and staff, and placed on your website. You may want to consider making the standards committee responsible for ensuring the constitution is designed to reduce the opportunity for misconduct and to promote effective governance. This will also mean that processes are properly accountable to both members and the public, and that relations with outside organisations are properly managed.

A wider role for standards committees can also be valuable for the following reasons:

- a work programme prevents ethics slipping off the agenda
- periodic ethical audits highlight any systemic weaknesses

- standards committees provide a useful structure for learning from the experiences and cases in other authorities
- standards committees can provide support to relevant officers when faced with a highly politicised environment

Comment: - See the section above on “functions of standards committees” for the additional functions delegated to the Standards Committee. The Council regularly reviews its constitution and has within the last year completed a major update.

Granting dispensations

Members can apply to their standards committee for a dispensation to allow them to attend meetings where they would otherwise be excluded because they have a prejudicial interest. This can happen when more than 50% of the council or a committee would be prevented from taking part in a meeting because of prejudicial interests, or when the political balance of the council or committee would be upset. Dispensations must be applied for in writing individually, and not as a group or authority. If the standards committee approves the application, it must grant the dispensation in writing and before the meeting is held. Only the standards committee can grant the dispensation and will do so at its discretion. Standards committees will need to balance public interests when granting dispensations. They will have to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of authority members. If a failure to grant a dispensation will result in an authority or committee not achieving the minimum number of members required for the group, this may be sufficient grounds for granting a dispensation. However, paragraph 12(2) of the 2007 Model Code of Conduct enables members to represent their community and speak on issues important to the community and themselves, even when they have a prejudicial interest. This is to support members’ roles as community advocates. If members have a prejudicial interest, under paragraph 12(2), they will be able to make representations, answer questions or give evidence relating to that business. This is provided that members of the public are also allowed to attend the meeting for the same purpose.

Note: there is a problem with the drafting of the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002. The political balance criterion for granting dispensations is linked to an authority being able to comply with its duty under the Local Government and Housing Act 1989. This duty requires the appointment of committees that reflect the overall political balance of an authority. However, the duty does not arise in relation to individual meetings, either of the authority or its committees. For this reason, it is difficult to envisage circumstances in which the criterion would be met.

Comment: - The Council’s constitution acknowledges that the power to grant dispensations is vested in the Standards Committee, although in practice applications for dispensations are rarely made. The Standards Board has

recently advised the East Sussex Fire Authority that the Department for Communities and Local Government, the responsible Government department is aware of the difficulty caused by the drafting of the Relevant Authorities (Standards Committee) Regulations 2002, and is looking at amending them. There is no fixed date when this will take place.

Politically restricted posts

The Local Government and Public Involvement in Health Act 2007 imposed new duties in relation to politically restricted posts under the Local Government and Housing Act 1989 on standards committees. These are outside the scope of this guidance, but should be included in the standards committee's terms of reference.

Comment: - *The Council's constitution acknowledges that the duties in relation to politically restricted posts are vested in the Standards Committee.*

Size & composition

You must have at least three people on your standards committee. It must include at least two members of the authority and at least one independent member. At least 25% of the members of the standards committee must be independent members. The chair of the standards committee must always be an independent member. You may therefore also want to appoint an independent member to act as vice chair of the committee in case the chair is unable to attend. If your authority has executive arrangements, you are permitted to have one executive member on the standards committee. However, this executive member must not be the elected mayor or leader. As the standards committee carries out a number of functions including the assessment of complaints and determination hearings, we recommend that your authority has at least six members on your standards committee. This is because different members will be required to carry out the different functions to avoid conflicts of interest. If your authority is responsible for any parish or town councils, at least two representatives from those parish or town councils must be appointed to your standards committee and they cannot also be members of your authority. A parish or town council representative must sit on the standards committee at all times when parish matters are being discussed. Please see the section on **Parish and town council representatives** on page (16) for further information.

Comment: - *The Standards Committee complies with these requirements. Only one executive member is a member of the Standards Committee. The Chairman is one of the independent Members. At its meeting on 10 June 2008 the Committee agreed that the position of Deputy Chairman remain vacant, with one of the independent Members deputising in the event of the Chairman being unavailable.*

Independent Members

Independent members are important in helping increase public confidence in local government. They provide a clear signal that the standards committee acts fairly and impartially. Independent members also bring a wider perspective from their outside experiences. There is no limit to the number of independent members you can have on your standards committee. Indeed some authorities may wish to have a majority of independent members. Your authority decides how to select independent members and how long an independent member should sit on the committee. We recommend that you set a fixed period of four years. This will be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that they could be perceived as losing their independence. When re-appointing an independent member, you should bear in mind that we recommend that independent members should serve no longer than two terms, which is a maximum of eight years. It may be helpful for independent members to be appointed for differing lengths of time so that the experience they gain is not all lost simultaneously.

Comment: - The case for a maximum of 2 consecutive 4 year terms for any independent member appointed after May 2008 seems compelling. With local authorities now responsible for the receipt, assessment, investigation and determination of most complaints of Member conduct, it is probable that the Council's independent members will have more contact with Members than hitherto. Increased contact could be perceived as leading to a loss of independence. Staggered appointments, e.g. two independent persons appointed every two years, would ensure that the experience is not all lost simultaneously.

Although the Council's 3 independent members have served on the Committee for some years, their involvement with Member conduct issues has been limited. At this time, they therefore cannot be said to have lost their independence. It is therefore suggested that the 8-year maximum does not apply retrospectively. The terms of appointment of the Committee's independent members are unclear. It is therefore proposed that a report be brought to a future meeting suggesting how their appointments can be rationalised.

Action point: - That all new independent members of the Committee be appointed for a 4 year term, subject to a maximum of two consecutive terms.

Choosing an independent member

Independent members must be chosen in a fair and open way. A person can only be an independent member if that person:

- has not been a member or employee of your authority within the five years before the date of appointment

- is not a member or officer of that or any other relevant authority. Please see the section **Recruiting independent members from another standards committee** on **page (13)** for further information on when this does not apply
- is not a relative or close friend of a member or employee of your authority
- has applied for the appointment
- has been approved by a majority of the members of the council
- the position has been advertised in at least one newspaper distributed in your authority's area, and in other similar publications or websites that the authority considers appropriate.

The decision on which other publications or websites to use may be something that the authority delegates to the standards committee. The regulations say that a 'relative' means:

- a partner (a spouse, civil partner or someone a person lives with in a similar capacity)
- a parent
- a parent of a partner
- a son or daughter
- a stepson or stepdaughter
- the child of a partner
- a brother or sister
- a brother or sister of a partner
- a grandparent
- a grandchild
- an uncle or aunt
- a nephew or niece
- the partners of any of the people mentioned above

The regulations do not provide a specific definition of a close friend. The Standards Board for England's publication the *Case Review 2007* includes a section on defining a close associate, which might be helpful in identifying a close friend. The *Case Review 2007* is available at www.standardsboard.gov.uk. The regulations require a majority of all

members of the authority to approve the appointment. However, we believe that in practice, a report only needs to go to full council when selecting independent members. If so, we recommend that the monitoring officer ensures the majority of members approve, not just those attending the meeting. We recommend that the power to assist the recruitment of independent members is delegated to the standards committee by the authority and is included in the committee's terms of reference. A standards committee may appoint a sub-committee to take on some of its functions, for example, if your standards committee is asked to advise members of the council on the appointment of independent or parish members. If so, then the standards committee may set up a sub-committee of suitably trained members to shortlist and interview candidates and make recommendations to council. The sub-committee may find it helpful to have the monitoring officer and a human resources officer present to provide advice and assistance. An individual's membership of a political party does not automatically bar them from being an independent member of a standards committee. However, the more politically active an independent member is the less likely they will be seen as being independent. You should consider public perception before making an appointment of this sort. If you are finding it difficult to attract suitable people to become independent members, you should review the criteria in your advertisement to make sure they are reasonable. For example, you should make sure that the time you are asking the member to invest is reasonable for the role. You may also want to consider additional methods of attracting candidates. This could include:

- placing articles in the local press about the role of an independent member
- placing advertisements on your website or on your local radio station
- placing flyers in libraries, adult learning centres or places of worship
- advertising through other authorities' partnerships or through the local voluntary or community sector
- approaching your citizen's panel
- the personal approach. For example, contacting neighbouring authorities which may have more suitable candidates than they can appoint.
- approaching a person who is an independent member of a standards committee of a different authority. This person may also be appointed as an independent member of the standards committee of your authority. This is unless they were a member or officer of your authority within the five years preceding the appointment, or are a relative or a close friend of a member or officer of your authority. Remember that all the selection criteria for the position will still apply, so even if you approach someone directly, they must still make a formal application.

We recommend that the application form includes sections on:

- personal details
- qualifications
- summary of experience
- relevant expertise/skills

Accepting a CV with an application form may make the process easier for busy candidates. You may also want to consider online applications. We recommend that the monitoring officer should be involved throughout the recruitment process to advise the panel and the authority.

Comment: - *The current independent members were appointed following a public advertisement, competitive interview and formal confirmation of the appointment by full Council.*

Skills and competencies of independent Members

The competencies you should look for in an independent member include:

- a keen interest in standards in public life
- a wish to serve the local community and uphold local democracy
- high standards of personal integrity
- the ability to be objective, independent and impartial
- sound decision making skills
- questioning skills
- leadership qualities, particularly in respect of exercising sound judgment
- the ability to act as the chair of an assessment or review sub-committee or a determination hearing. Please see the section on **The role of the chair** on **page (13)** for further information on acting as a chair.

You should assess candidates looking for these qualities in interviews and any other assessment process you carry out. You also need to ensure that your authority complies with its duties under the Equality Act 2006. The human resources department of your authority may be able to advise you further on this matter. For further information on the recruitment of independent members, you may want to look at the recruitment pack produced by the Association of Council Secretaries and Solicitors (ACSeS). The pack provides practical advice on how to set about recruiting independent members, together with their roles and responsibilities. The pack can be downloaded at www.acses.org.uk

Comment: - *The independent member recruitment process involves the completion of an application form, interview and the taking up of references. These measures are designed to assess candidates' skills.*

Recruiting independent members from another standards committee

An independent member of one standards committee may also sit on other standards committees. For example, the member can sit on county and district, or county, police and fire authorities' standards committees. Independent members may also be temporarily appointed to another standards committee to consider a particular assessment, review or hearing or for a particular period of time. For example, it would be appropriate to appoint an independent member of a neighbouring standards committee for a short period in situations where the permanent member is unwell or if there is a conflict of interest. These appointments can be made without needing to advertise the position. The appointments do not need to be ratified by a majority of the members of the authority, but proper procedures should be in place to appoint independent members on a temporary basis. Independent members appointed on a temporary basis cannot have been a member or officer of that authority in their five years before the appointment, and cannot be a close friend or a relative of a member or officer of that authority. They must also comply with the Code of Conduct of each authority whose standards committee they sit on.

Comment – *The Standards Committee has given the Monitoring Officer delegated powers to exercise this new function so that appointments can be made without delay in emergencies.*

Ceasing to be an independent member

Under the regulations, any person appointed as an independent member who becomes a member or officer of an authority, or a relative of a member or officer of that authority, will no longer be able to be an independent member of that authority's standards committee.

Comment: - *Independent Members will need to keep this under review during their periods of service.*

The role of the chair

It is a legal requirement that the chair of the standards committee must be an independent member. It is important for the chair to be independent because of the key role they play in the business of the standards committee. By being independent, the chair can ensure that the standards committee's business is conducted in such a way that no one can question its integrity. Authorities should aim to select a person who will command the respect of members and the local community. We recommend that the decision on who should be appointed as chair be taken by the full council or delegated to the standards committee. You may also choose to appoint an independent vice chair for the reasons discussed in the section on **Size and composition** on **page (9)**. An

effective chair will ensure that the business of the meeting is completed while allowing a fair and balanced debate and any professional advice to be taken into account. The chair may summarise the points put to the committee, and will ensure that the meeting is run correctly from a procedural point of view. They will also ensure that the decisions made are accurately recorded. The chair is responsible for keeping order and adjourning meetings where necessary. They should also have a good level of assertiveness. It is also the chair's responsibility to ensure that members of the public and press leave the meeting when a private report is being considered. Please see the section **Skills and competencies of independent members** on **page (12)** for further information. Preliminary matters will often arise in relation to hearings. The chair, with the advice of the monitoring officer, may make initial process decisions in relation to such matters. However, it is important that the hearing committee or sub-committee considers and approves such arrangements. Ultimately, it is the way the chair operates independently, and is seen to operate independently, that should enhance confidence in the integrity of the standards committee. It is also the chair's status as an independent member, a role drawn from outside the authority and independent from the authority that should provide a clear signal that the committee is fair.

Comment: - *The Chairman is appointed by the Standards Committee. The current Chairman has been in this role since 2006 and has a background and experience fitting for the discharge of the role.*

Induction of independent Members

While it is not mandatory, we recommend that an induction programme should be provided for independent members. This should include training on the Code of Conduct and the functions of standards committees. Inductions should also include attendance at authority meetings, such as meetings of planning and licensing committees and the full council. If authorities are operating executive arrangements, then attendance at cabinet meetings and overview and scrutiny committee meetings should be part of the induction. Independent and parish representatives should also receive a copy of the authority's constitution. In addition, they should receive a copy of the Code of Conduct that has been adopted by your authority, the protocol for member/officer relations and any other protocol in use. The constitution should also include the authority's scheme of delegations of functions. Whistle-blowing policies, any policies and procedures under the Equality Act 2006, and the authority's anti-bullying policy should also be included. It may be helpful to add an A-Z of people in the authority, a list of authority services and the municipal calendar. There are a number of regional independent member organisations. Many authorities use a mentoring system to assist new independent members of standards committees. In some parts of the country regional groups of independent members have been established. Information relating to these will be helpful as may a list of useful websites. To find out if there is a regional group of independent Members in your area you should contact the Standards Board for England. The Association of Independent Members of Standards Committees in England (AIMSce) may

also be able to provide support. Information about AIMSce can be found at www.aimsce.org.uk Authorities may also want to consider making members' IT facilities available to both their independent and parish representatives.

Comment: - *All the current independent Members have served on the Standards Committee for a number of years, have knowledge of the standards regime and understand the basic political arrangements. Virtually all the documents which they need, including the Code of Conduct, are available to them on the Council's website.*

Action Point: - *That a tailored induction programme, appropriate to the needs of the new independent member be provided, and that one of the existing independent members acts as his/her mentor for 2 meetings of the Standards Committee.*

Remuneration for independent Members

Authorities must introduce an annual scheme for the payment of a basic allowance to their members, based on the recommendations of an independent remuneration panel. The annual scheme can also extend to the payment of other allowances, including a co-optee's allowance. A co-optee's allowance relates to a person who is not a member of the authority but is a member of a committee or sub-committee, for example an independent member of a standards committee. We recommend that independent members should be able to claim for financial loss, travel and subsistence. This will help attract those people that may have been deterred from the role because of the costs involved. Each authority must consider the recommendations of its panel as to whether it should provide for the payment of a co-optee's allowance and of travelling and subsistence expenses.

Comment: - *The Council's scheme of allowances set out in Part 10 of the Constitution provides for allowances to be paid to any independent Chairman and Deputy Chairman (if appointed). Independent Members of the Committee are also able to claim travel and subsistence allowances.*

Indemnities for independent Members

Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements under the Local Authorities (Indemnities for Member and Officers) Order 2004. We recommend that all authorities include independent members in their indemnity arrangements.

Comment: - *All co-opted Members, including independent Members are covered by the Council's Indemnity Scheme.*

Complying with the Code of Conduct and the register of Members' interests

Independent members must sign an undertaking to comply with the Code of Conduct and disclose their interests in the register of members' interests maintained by the monitoring officer, in the same way as other members. Complaints about the conduct of independent members must be treated in the same way as that of other members.

***Comment:-** The independent Members have signed the undertaking and made declarations of interests.*

Parish and town council representatives

If your standards committee is responsible for parish or town councils we recommend you have a minimum of three parish or town council representatives on your standards committee, though the legal minimum is two. A standards committee with three parish or town council representatives will provide you with flexibility. It should allow the local assessment of complaints to be carried out if a parish or town council representative is unavailable or conflicted out. You may wish to increase the number further to avoid situations where the parish or town council representative is conflicted out, and to prevent the parish or town council representatives from feeling isolated. It will also avoid meetings having insufficient members, if the parish or town council representative is not present when issues affecting parish or town councils are discussed. This will bring the recommended total number of people on your standards committee to nine members. Having nine members means that you can meet the requirement of having a different parish or town council representative when the committee's sub-committees carry out each of the separate assessment and review functions. Please see our guidance **Local assessment of complaints** for further information. Your council must consult parish and town councils within its area to help decide if there should be a parish sub-committee to deal with some of its functions relating to parish and town council matters. Any parish sub-committee must include at least one parish or town council representative and at least one independent member. In addition, your council must consult parish and town councils to determine how many parish and town council representatives are needed and how long they should serve on the committee.

***Comment:** - There are two Rottingdean Parish Councillors on the Standards Committee. As the Council is responsible for only one parish council, it is considered that the legal minimum of two representatives is adequate.*

Choosing parish and town council representatives

Your authority must decide how to recruit and appoint parish or town council representatives. Your parish and town council representative should have the trust of town and parish councils in your area, so you should involve them in the selection procedure. If you are finding it difficult to find a parish or town council representative, your local county association of local councils may be

able to help you. For example, the county association may be able to give you a list of possible candidates. They may also be prepared to conduct an election process for you. This process should receive the support of the parish and town councils in the area and show that you want to appoint standards committee members in a fair and open way.

Comment: - *To date, it has been left to the Rottingdean Parish Council to put forward representatives. There is no reason why this practice should be changed.*

Other members

Executive members on the standards committee

If the authority is operating executive arrangements, the standards committee does not need to include a member of the executive. However, you should consider whether it is appropriate to appoint an executive member. Appointing an executive member might show that the committee is supported and respected by all parts of the authority. Not having an executive member could reflect a degree of independence from the political leadership of the authority. Nevertheless, this is ultimately a decision for the authority.

Comment:-*Councillor Fallon Khan is both a member of the executive and of the Standards Committee.*

Elected members on the standards committee

Standards committees need not reflect the political balance of the authority. This is because the standards committee should be above party politics and its members need to have the respect of the whole authority, regardless of the governing political party. It may be helpful to remind elected members of this when committee appointments are being made. It would be useful for your standards committee to include members who are supported by all political parties, particularly when the local assessment of complaints is carried out. This is so that greater trust and confidence can be established in the decision-making process among all political members. Standards committees should be seen as making judgments impartially and without regard to party loyalty. Elected members should consequently be mindful of this when serving on a standards committee. Elected members on standards committees should not be subject to a party whip. In other words, they should not be told how to vote on matters. Members should also remember that they must adhere to the Code of Conduct when serving on a standards committee. It is important when assessing complaints, reviewing assessment decisions and holding determination hearings that the sub-committee is properly constituted and that members are trained on the Code and the relevant legislation. We recommend that you keep a clear record of the training of all standards committee members. Some authorities provide refresher training before hearings.

Comment:- *The Standards Committee is not subject to the political balance regime, although all political groups are represented on it. Elected Members serving on the Standards Committee are not subject to the party whip. Panels are constituted in accordance with the relevant Regulations. Records of all organized training are maintained by Democratic Services.*

Substitute members

Some authorities operate a substitute system. This allows a substitute member to attend a meeting of the committee or sub-committee whenever a regularly appointed member cannot be present. This is often done to maintain the political composition. However, we do not recommend the use of substitutes for standards committees. Standards committees are not intended to operate along party political lines and therefore it is not necessary to ensure a political balance. In instances where all your independent members are unavailable, you would be able to substitute your independent members with independent members from another authority. Please see the section on **Recruiting independent members from another standards committee on page (13)** for further information. It should also be noted that nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

Comment: *- A substitute is entitled to attend all Council Committees, including the Standards Committee by virtue of Council Procedure Rule 18.13. However, the disadvantages of a substitution system are considered to outweigh any advantages. With a total membership of 11 members, it is unlikely that fewer than 3 members would attend, rendering any meeting of the Committee inquorate. It is therefore proposed that the Governance Committee which is responsible for reviewing the Constitution be requested to recommend to full Council that the substitute rule be disapplied in relation to the Standards Committee. In relation to the independent Members, the Committee has agreed to delegate to the Monitoring Officer the new power to appoint independent Members from the standards committees of other authorities. The aim is to use this power in emergencies, for example if several of the Council's independent Members are unable to participate in a matter through illness or conflict of interest.*

Action Point: *- That the Governance Committee be requested to recommend to full Council that Procedure Rule 18.13 be disapplied in relation to the Standards Committee.*

Supporting standards committees

The role of the monitoring officer

Your monitoring officer plays an important role in helping the standards committee to carry out its functions. The monitoring officer should have the necessary knowledge, skills and experience to do this. They are the link between your members and the standards committee. Your monitoring officer also plays an important role in the relationship between parish and town

councillors and the standards committee. Under the Local Government Act 2000, monitoring officers are responsible for investigating allegations and they receive directions to carry out actions other than an investigation. It is for this reason that they are well placed to monitor the effectiveness of the Code of Conduct. Please see our guidance **Local assessment of complaints** for further information on other action. Monitoring officers must also maintain the register of members' interests. Monitoring officers may appoint deputies to help them fulfill their roles. They may, for example, appoint a deputy to conduct an investigation on their behalf, or to write a report to the standards committee. Your monitoring officer may also want to arrange training on standards matters for standards committees or for other members. Under the Code, members must have regard to the advice of the monitoring officer when it is given as part of the monitoring officer's statutory duties.

***Comment:** - Alex Bailey, the Director of Strategy & Governance is the Council's Monitoring Officer. Abraham Ghebre-Ghiorghis, the Head of Law is the Deputy Monitoring Officer. Both are experienced local government lawyers. They are responsible for maintaining the register of Members' interests. Training for Standards Committee members was provided through the screening of the Standards Board DVD entitled "The Code Uncovered" on 6 November 2007, and through an exercise on Local Assessments following the 18 March 2008 meeting.*

Operation of standards committees

Validity of meetings

The requirements in relation to membership and composition of standards committees are set out in the section on **Size and composition** on **page (9)** of this guidance. All members of sub-committees must be drawn from and appointed by the standards committee. A standards committee must appoint a sub-committee to:

- assess new complaints
- review decisions to take no action over a complaint

A standards committee can appoint a sub-committee to:

- consider a monitoring officer's final investigation report
- consider determination hearings

For the meeting of the sub-committee to be valid at least three members of the standards committee must be present throughout. These three members must include at least one member of the authority and one independent member, who must be the chair. Meetings of the standards committee also have to meet the requirements set out above to be valid. The requirement to have an independent chair does not apply to other sub-committees of the standards committee. A member of an assessment sub-committee cannot be

present at the review sub-committee meeting when it considers a complaint that the assessment sub-committee decided no action should be taken on. Please see our guidance **Local assessment of complaints** for further information. If the standards committee appoints a sub-committee to consider matters relating to parish and town councils, and the members of those councils, the sub-committee must have at least three members who are present throughout the meeting, including a parish or town council representative and an independent member. At least one parish and town council representative must be present when matters relating to parish and town councils are being discussed by any meeting of the standards committee or one of its sub-committees.

Comment: - *The Council's constitution is compatible with the above. .*

Agendas and reports for standards committee meetings

Standards committee agendas should be open for inspection five days before the meeting and a copy should be sent to parish and town councils that the authority is responsible for. Meetings of the assessment and review sub-committees are closed and therefore agendas for these meetings do not come under this rule. Many councils place agendas on their website. Copies of meeting reports should also be available for inspection. If the monitoring officer is a **proper officer** they can decide to exclude the whole report or any part of it, if they believe the meeting where the report(s) will be discussed is unlikely to be open to the public. These might include confidential or exempt items, or parts of reports that if disclosed might be in breach of the Data Protection Act. If the chair believes, by reason of special circumstances specified in the minutes, that an item should be considered as a matter of urgency, this can be considered, despite it not having appeared on the agenda for the meeting. Meeting minutes should be available for six years after the meeting, unless they relate to a part of the meeting that the public was excluded from, in which case they should not be made available. Please see our guidance **Local assessment of complaints** for further information on access to meetings of the assessment and review sub-committees.

Comment: - *Council officers are aware of and ensure compliance with these requirements. Agendas, reports and minutes of meetings of the Standards Committee can be accessed through the Council's website except to the extent that they contain confidential or exempt information.*

Subject:	<i>Standards Board Guidance affecting changes to the procedures for local assessment, investigation and determination of complaints</i>		
Date of Meeting:	16 September 2008		
Report of:	<i>Director of Strategy & Governance</i>		
Contact Officer:	Name:	<i>Brian Foley</i>	Tel: 29-3109
	E-mail:	brian.foley@brighton-hove.gov.uk	
Wards Affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report introduces new Standards Board guidance that will affect the Council's adopted procedures for the local assessment, investigation and determination of complaints about member conduct, and proposes how the guidance will be addressed.

2. RECOMMENDATIONS:

- 2.1 That Members note the report.
- 2.2 That as an interim measure, Members approve the use of the East Sussex Fire Authority's adopted procedures for investigation and determination of complaints.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 On 12 December 2004 the Council adopted a procedure for the "Local investigation of allegations of Member Misconduct," and for the "Local determination of allegations of Member Misconduct." Those procedures were amended in March 2007.
- 3.2 With effect from 8 May 2008, the responsibility for receiving complaints of Member Conduct moved from the Standards Board to the Council.
- 3.3 On 23 May 2008 the Council adopted a procedure for the "Local assessment of allegations of Member Misconduct"
- 3.4 By virtue of the Standards Committee (England) Regulations 2008, the Council is obliged to consider guidance issued by the Standards Board when exercising its investigation and hearings functions.

- 3.5 On 23 June the Standards Board issued guidance on the Local Assessment of Complaints, and on 10 August 2008 this guidance was updated. At the same time the Standards Board issued new guidance for Local Investigation of Complaints and Standards Committees Determinations. The guidance is extensive, and will require changes to be made to existing procedures.
- 3.6 On 14 August 2008, the Assessment Panel held its first meeting to consider an allegation of Member misconduct.
- 3.7 In the light of the recently issued guidance, and of the experience of the first assessment panel meeting, it is considered appropriate to review the Council's existing procedures, particularly those relating to investigations and determinations which pre-date the change of responsibility for the receipt of complaints about member misconduct.
- 3.8 The key areas that may require amendment include:
- Full checking of the procedures for any inconsistencies.
 - Changes of reference from Standards Board to Standards Committee where necessary, and other consequential amendments to reflect the change to local responsibility for receipt of complaints
 - Including a provision to defer investigations as encompassed within the new guidance
 - Amendment to sanctions available to the Standards Committee
 - Inclusion of guidance relating to the process of considering appropriate sanctions
 - Guidance relating to written decisions
 - Changes in provision for reporting decisions of the Assessment Panel
- 3.9 It is proposed that officers review the existing procedures, legislative requirements and latest Standards Board guidance with a view to presenting new procedures for adoption to the Committee at its 11 November 2008 meeting.
- 3.10 As will be appreciated from the foregoing, the existing Investigation and Determination procedures are not really appropriate. It is therefore recommended that the East Sussex Fire Authority's recently adopted procedures, attached as appendix 1 and read as having been amended where necessary, be used as the Council's procedures as an interim measure. The Fire Authority's procedures postdate 8 May 2008, and were formulated by Brighton & Hove City Council's former Principal Solicitor, John Heys.

4. CONSULTATION

- 4.1 No consultation has been carried out.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are none

Finance Officer Consulted: Ian Withers

Date:01 September 2008

5.2 Legal Implications:

These are addressed in the body of the report.

Lawyer consulted: Liz Woodley

Date: 28 August 2008

5.3 Equalities Implications:

There are no direct implications arising from this report

5.4 Sustainability Implications:

There are no direct sustainability implications arising from this report

5.5 Crime & Disorder Implications:

There are no direct crime and disorder implications arising from this report

5.6 Risk and Opportunity Management Implications:

There are no direct risk and opportunity implications arising from this report

5.7 Corporate / Citywide Implications:

There are no direct corporate/citywide implications arising from this report

SUPPORTING DOCUMENTATION

Appendices:

1. East Sussex Fire Authority's adopted procedures for Local Investigation of allegations of Member Misconduct.
2. East Sussex Fire Authority's adopted procedures for Local Determination of allegations of Member Misconduct.

Documents In Members' Rooms

1. None

Background Documents

1. None

APPENDIX 1

EAST SUSSEX FIRE AUTHORITY

Procedure for Local Investigation of Allegations of Member Misconduct and presentation to a Hearing Panel for initial findings under Regulation 17

Contents

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Introduction and Summary

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Members of East Sussex Fire Authority and applies to breaches of the authority's Code of Conduct for Members. It takes into account the statutory provisions in the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and relevant statutory guidance.

The procedure applies where an allegation that a Member has breached the authority's Code of Conduct for Members has been referred for investigation to the authority's Monitoring Officer by an Assessment Panel or Assessment Appeal Panel of the authority or by an Ethical Standards Officer of the Standards Board for England.

The Monitoring Officer is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to a Hearing Panel which may be the authority's Standards Panel but usually will be a Sub-Committee of the Standards Panel convened for the purpose.

When the Investigating Officer has completed the investigation, the Hearing Panel must meet and has three initial findings that it can make under Regulation 17 of the Standards Committee (England) Regulations. If the Investigating Officer has found there has been no failing on the part of the Member, it can accept that finding. If the Hearing Panel decides not to accept that finding or if the Investigating Officer has found there was a failing on the part of the Member, there are two alternative findings that can be made. These are either to proceed to a formal hearing of the matter by the authority's Hearing Panel, or to refer the matter to the Adjudication Panel for England. The limited circumstances in which the matter may be referred to the Adjudication Panel are set out below in part 5 of this Procedure.

Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct for Members, or where the Hearing Panel decides to hold a full hearing although the Investigating had found no failing in his/her report, there will then be a formal hearing to determine whether a breach of the authority's Code of Conduct for Members has occurred and whether any action should be taken in consequence.

In these processes, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Hearing Panel (or exceptionally the Adjudication Panel), to enable the Panel to come to an informed decision as to whether the Member has failed to comply with the authority's Code of Conduct for Members and upon any consequential action.

The authority's Hearing Panel acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision. The Monitoring Officer may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is desirable and does not conflict with statutory requirements.

Interpretation

“Assessment Panel” includes the Assessment Appeal Panel, the role of these Panels being to assess complaints about alleged breaches of the Code of Conduct and decide what action, if any, should be taken.

“Code of Conduct” means Code of Conduct for Members.

“ESO” means an Ethical Standards Officer.

“Member”, except where the context otherwise requires, means the elected member or co-opted member of the authority who is the subject of the allegation that he/she has breached the Code of Conduct . It also includes the Member’s nominated representative.

“Investigating Officer” means, as appropriate to the circumstances, the person appointed by the Monitoring Officer to undertake the investigation (which may include the Monitoring Officer, and his or her representative) or the ESO who has referred a matter for investigation to the authority (and his or her nominated representative).

“the matter” is the subject matter of the Investigating Officer’s report.

“The Hearing Panel’ refers to the Standards Panel or its Sub-Committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct.

(h) “Regulation 17” means Regulation 17 of the Standards Committee (England) Regulations 2008

2 Notification of Reference of Allegation to the Monitoring Officer

(a) Appointment of Investigating Officer

Upon receipt an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the authority’s Hearing Panel. The Investigating Officer may be an officer of the authority¹, an officer of another local authority, or an external Investigating Officer. In relation to an allegation referred by an ESO, if the Investigating Officer is other than the Monitoring Officer, the Monitoring Officer shall inform the ESO of the name and address of the person to whom the investigation has been delegated.

¹ The role of the Investigating Officer must be kept distinct from the roles of committee support officer and legal adviser to the Hearing Panel. The Investigating Officer must be a different person from the person or persons who act as committee support officer and/or legal adviser to the Hearing Panel in respect of the allegation.

Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

(b) Notification to the Member

Subject to any direction from the Assessment Panel or an ESO, the Monitoring Officer will then notify² in writing the Member against whom the allegation is made:

that the allegation has been referred to him/her for local investigation and determination;

the identity of the person making the allegation;

of the conduct which is the subject of the allegation;

of the section(s) of the Code of Conduct which appear to him/her to be relevant to the allegation;

of the procedure which will be followed in respect of the allegation, and of the identity of the Investigating Officer.

The Monitoring Officer shall provide the Member with a copy of any report received from the ESO (see also 2(e) below).

(c) Notification to the Standards Committee and other bodies

Subject to any direction from the Assessment Panel or an ESO, at the same time as notifying the Member, the Monitoring Officer will notify each member of the Standards Committee in writing, under a requirement for confidentiality, of the matters set out in paragraphs 2(b)(i), (iii), (iv) and (vi) above and will also inform the following that the matter has been referred for investigation:-

(i) the Monitoring Officer for the Standards Committee of any other authority concerned and

(ii) the Clerk of any Parish Council concerned.

(d) Notification to the person who made the allegation (the Complainant)

Subject to any direction from the Assessment Panel or an ESO, at the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i), and (iii) to (vi) above and will provide any directions that can be made regarding the forthcoming investigation.

(e) Initial response of the Member

In notifying the Member of receipt of the allegation, the Monitoring Officer shall request the Member to respond to the Investigating Officer in writing within 14 days of notification as follows:

(i) *advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;*

(ii) *listing any documents which the Member would wish the*

² In exceptional cases, where there is reason to believe that it would be contrary to public interests or would prejudice any person's ability to investigate the allegation there is power to defer notifying the Member.

- Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;*
- (iii) *providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and,*
- (iv) *providing the Investigating Officer with details of any information which the Member would wish the Investigating Officer to seek from any person or organisation.*

- (f) Supporting information from the person who made the allegation

In notifying the person who made the allegation as above, the Monitoring Officer will request him/her to respond to the Investigating Officer within 14 days

- (i) *listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;*
- (ii) *providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation of the allegation; and,*
- (iii) *providing the Investigating Officer with details of any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.*

3. Conduct of the Investigation

- (a) Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Hearing Panel a report which, together with any report provided by the ESO, will provide the Hearing Panel with sufficient information to determine whether the Member has acted in breach of the Code of Conduct and, where there has been a breach of the Code of Conduct whether any action should be taken in respect of the Member or in consequence of the breach, and what any such action should be.

- (b) Termination of the Investigation

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Hearing Panel and to enable the Hearing Panel to come to a considered decision on the allegation.

(c) Additional Matters

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct by the Member other than the breach which he/she is currently investigating, the Investigating Officer shall report the matter to the Monitoring Officer who will provide the Member with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct. The Monitoring Officer will then determine whether to report the additional matter.

(d) Identification of those people from whom the Investigating Officer will seek information

Following notification to the Member, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Member has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(e)(ii) to (iv) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

(e) Production of documents, information and explanations

- (i) *In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary or expedient for the purposes of carrying out the investigation.*
- (ii) *In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any other authority concerned to provide such advice and assistance which he/she thinks may reasonably be needed for the purposes of carrying out the investigation. (Note - The authority concerned, or in the case of a Parish Council, the authority responsible for that Parish Council, can be required to meet the*

reasonable cost of any advice and assistance so provided.)

(iii) In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any other authority concerned to afford reasonable access to such documents in the possession of that authority as he/she thinks necessary for the purposes of carrying out the investigation.

(f) Interviews

(i) *Requesting attendance*

In the course of the investigation the Investigating Officer may request any person to attend and appear before him/her or otherwise provide any information, document or explanation for the purpose of paragraph 3(e), as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) *Representation*

Any person who appears before the Investigating Officer can arrange to be accompanied, at their own expense, by a solicitor or friend.

(iii) *Notes of interviews*

Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

(g) Costs

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his/her request, such fees or allowances as he/she considers to be appropriate subject to the maxima set by the authority.

(h) Reference back to the Standards Board or the Assessment Panel

(a) In relation to any allegation referred by an ESO for investigation, at any point in the course of the investigation, if the Investigating Officer is of the opinion

(i) *that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Hearing Panel, or*

(ii) during the course of the investigation new evidence has been uncovered of the conduct of the Member that breaches the Code of Conduct but that the new evidence extends the scope of the investigation beyond the allegation referred by the ESO or

that the Member is obstructing the investigation by refusing to co-operate or

- (iv) that there is some other substantial reason,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the ESO with reasons in writing to resume his/her investigation of the matter³. Where the ESO does resume his/her investigation, the Monitoring Officer shall ensure that the Member concerned, the person who made the complaint, and the members of the Standards Committee is informed of such resumption. Where the ESO declines to resume his/her investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

(b) In relation to any allegation referred by an Assessment Panel for investigation, at any point in the course of the investigation, the Investigating Officer may suspend his/her investigation and refer the matter to the Monitoring Officer if he/she is of the opinion

- (i) that as a result of new evidence or information, the matter is materially more serious or materially less serious than may have seemed apparent to the Assessment Panel when it referred the matter to the Monitoring Officer for investigation, and that the Panel would have made a different decision had it been aware of that new evidence or information, or
- (ii) that the person who is the subject of the investigation has died, or is seriously ill, or has resigned from the authority concerned and that in the circumstances it is no longer appropriate to continue with the investigation.

In forming an opinion under paragraph (b)(i) above, the Investigating Officer may take account of the failure of any person to co-operate with the investigation, an allegation that the Member concerned has engaged in a further breach of the Code of Conduct, or an allegation that another Member has engaged in a related breach of the Code of Conduct.

The Monitoring Officer may refer the matter back to the Assessment Panel for re-determination, or may require the Investigating officer to continue with the investigation. If the matter is referred for re-determination, the Monitoring Officer will instruct the Investigating Officer as appropriate in the light of the decision of the Assessment Panel.

³ Only one such request may be made during the course of an investigation.

(i) Confidentiality

The Investigating Officer shall as necessary request that people interviewed and anyone else aware of the investigation maintain confidentiality in order to preserve the integrity of the investigation process.

4 The Draft Report

- (a) Prior to issuing the draft report the Investigating Officer shall send a copy of a statement to each witnesses or party interviewed, on whose evidence he/she will rely in compiling the draft report, and request that they confirm their statement and send any comments thereon to him/her within 14 days.
- (b) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft, dated report, marked confidential, setting out:
- (i) the details of the allegation;*
 - the relevant provisions of statute and of the Code of Conduct;*
 - the Member's initial response to notification of the allegation (if any);*
 - the relevant information, advice and explanations which he/she has obtained in the course of the investigation;*
 - a list of any documents relevant to the matter;*
 - a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;*
 - a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;*
 - a statement of his/her draft findings of fact and reasoning for these;*
 - his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct.*
- (c) **The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the Investigating Officer will present a final report to the Hearing Panel once he/she has considered any comments received on the draft report.**
- (d) **The Investigating Officer shall then send a copy of his/her draft report in confidence to the Member and the person making the allegation, for comment and request that they send any written comments thereon to him/her within 14 days.**

- (e) **The Investigating Officer will not send the draft report to any witnesses.**
- (f) Responses to the draft report from the Member or the Complainant may reveal the need for further investigation. If that further investigation results in such significant changes being made the Investigating Officer may decide to issue a further draft report to the Member and the Complainant.

5 The Final Report

- (a) **After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final, dated report. The final report shall include a finding either that there has not been a failure to comply with the Code of Conduct or that there has been such a failure. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Hearing Panel, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, including background documents, records of telephone conversations, letters, and statements from interviews of witnesses or other parties etc and may include a chronology of events.**
- (b) **The Monitoring Officer shall then send a copy of the final report to the Member, advising that the Monitoring Officer will refer the report to the Hearing Panel for their consideration and an initial finding under Regulation 17. The Member will at the same time be sent a note explaining the three alternative findings that the Hearing Panel may make under Regulation 17.**
- (c) **The Monitoring Officer shall ensure that, when the agenda for the Hearing Panel is sent out to members of the Hearing Panel, that they also receive a copy of the final report. The agenda and the report shall also be sent to:**
 - (i) *The person who made the complaint;*
 - (ii) *In relation to any allegation referred by an ESO for investigation, the ESO and*
 - (iii) *The Monitoring Officer for any other Standards Committee of any other authority of which the Member is a member, if that authority has so requested*

together with, in relation to the person who made the complaint, a note explaining the three alternative findings that the Hearing Panel may make under Regulation 17.

- (d) **When the Hearing Panel considers the final, report in accordance with regulation 17, it shall make one of the following findings:**

- (i) *That it accepts the Investigating Officer's finding that the Member has not failed to comply with the Code of Conduct as set out in the allegation;*
- (ii) *That the matter should be considered at a hearing of the Hearing Panel (which will be conducted in accordance with the authority's adopted Procedure for Local Determination Hearings); or⁴*
- (iii) *That the matter should be referred to the Adjudication Panel for determination, but the Hearing Panel may only make such a finding if (1) the Hearing Panel first determines that the action it could take against the Member would be insufficient were a finding of failure to be made and (2) the President or Deputy President of the Adjudication Panel has agreed to accept the referral.*

(e) Where the Hearing Panel finds as set out in Paragraph 5(d)(i) above (no failure to comply with the Code of Conduct), the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, to:

- (i) *The Member;*
- (ii) *In relation to any allegation referred by an ESO for investigation, the ESO;*
- (iii) *The Standards Committee,*
- (iv) *The Monitoring Officer for any other Standards Committee concerned;*
- (v) *The Clerk of any Parish Council concerned and*
- (vi) *The person who made the allegation.*

and shall ask the Member whether he objects to the publication in at least one local newspaper and (in both cases at the discretion of the Hearing Panel) on the authority's web-site and in any other publication, of a notice that there has been no failure to comply with the Code of Conduct, and arrange for the publication of such a notice in the local newspaper and otherwise as directed by the Hearing Panel unless the Member so objects.

(f) Where the Hearing Panel finds as set out in Paragraph 5(d)(ii) above (that the matter should be considered at a formal hearing) the Monitoring Officer will arrange for the matter be considered at a hearing of the Hearing Panel which will be conducted under the authority's adopted Procedure for Local Determination Hearings.

⁴ Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members, but simply that, on the basis of the Investigating Officer's report, the Hearing Panel is not at this stage prepared to come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.

- (g) Where the Hearing Panel finds as set out in Paragraph 5(d)(iii) above (that the matter should be referred to the Adjudication Panel) the Monitoring Officer will arrange to refer the matter to the President or Deputy President of the Adjudication Panel as appropriate.**

APPENDIX 2

EAST SUSSEX FIRE AUTHORITY

Procedure for Local Determination Hearings of Allegations of Member Misconduct

Introduction and Summary

1. Interpretation
2. Modification of Procedure
3. Representation
4. Pre-hearing Procedure (Ethical Standards Officer's Report)
5. Pre-hearing Procedure (Local Investigation)
6. Legal Advice to the Hearing Panel
7. Setting the scene at the Hearing
8. Preliminary procedural issues
9. The Hearing of the allegation of failure to comply with the Code of Conduct
10. If the Member has not failed to follow the Code of Conduct
11. Action consequent upon a failure to comply with the Code of Conduct
12. Reference back to the Ethical Standards Officer or Investigation Officer

13. The close of the Hearing

14. Appeals

Introduction and Summary

This note sets out the procedure which will be followed in the local determination of allegations of misconduct by Members. It takes into account the statutory provisions in the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and relevant statutory guidance.

The procedure enables a Hearing Panel to receive an investigation report and hear both sides of the matter. The Hearing Panel can then come to an informed decision as to whether the Member has failed to comply with the authority's Code of Conduct for Members and upon any consequential action.

The Hearing Panel acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

The Hearing Panel will normally consist of three persons (which is the minimum number required) including at least one independent person and at least one Member of the authority. The Hearing Panel will be chaired by an independent person.

Interpretation

[Note – in the final version the definitions will be put in alphabetical order.]

“Code of Conduct” means the Code of Conduct for Members.

“Member”, except where the context otherwise requires, means the member or co-opted member of the authority who is the subject of the allegation being considered by the Hearing Panel. It also includes the Member's nominated representative.

“Investigating Officer” as appropriate in the circumstances means the Ethical Standards Officer who referred the report to the authority, and includes his or her nominated representative or the person appointed by the Monitoring Officer to undertake the investigation (which may include the Monitoring Officer and his or her nominated representative).

“The matter” is the subject matter of the Investigating Officer's report.

“The Hearing Panel” refers to the Standards Panel or its Sub-committee whose role it is to hear cases and make local determinations on complaints about alleged breaches of the Code of Conduct.

“The Committee Support Officer” means a person given responsibility by the authority for supporting the Hearing Panel's discharge of its functions, acting as clerk for the hearing including recording the Hearing Panel's decisions. (This officer may also be the Legal Adviser.)

‘Legal Adviser’ means a person given responsibility by the authority for providing legal advice to the Hearing Panel. This may be the Monitoring Officer, another legally qualified or suitably experienced officer of the authority, or someone appointed for

this purpose from outside the authority. ⁵(This officer may also be the Committee Support Officer.)

- (h) “Regulation 17” and “Regulation 20” means regulations 17 and 20 respectively of the Standards Committee (England) Regulations 2008.

“The Chair” refers to the person presiding at the hearing.

- (h) “ESO” means Ethical Standards Officer

Modification of Procedure

The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness and does not conflict with any statutory requirement.

Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Panel, another person. Note that the cost of such representation must be met by the Member, unless the Hearing Panel has expressly agreed to meet all or any part of that cost.⁶

Pre-hearing Procedure (ESO’s Report)

Upon reference of a matter from an ESO for local determination following completion of the ESO’s report, the Monitoring Officer shall:

- (a) **Arrange a date for the Hearing Panel to hear the matter;**
- (b) **Send a copy of the ESO’s report to the Member, advise him/her of the date, time and place for the hearing, provide the Member with a copy of the determination procedure and outline the Member’s rights and responsibilities during the hearing process;**

⁵ The role of the Investigating Officer must be kept distinct from the roles of Committee Support Officer and Legal Adviser to the Hearing Panel. The Investigating Officer must be a different person from the person or persons who act as committee support officer and/or legal adviser to the Hearing Panel in respect of the allegation.

⁶ Regulations under Section 101 of the Local Government Act 2000 grant authorities a discretion to provide an indemnity or to provide insurance to Members to meet the costs which they may incur in “Part 3 proceedings” (investigations, hearings or other proceedings under Part III of the 2000 Act), but any such indemnity or insurance is required to be subject to a requirement to repay any sums received in the event that the member is found to have failed to comply with the Code of Conduct.

- (c) **Send a copy of the ESO's report to the person who made the allegation, advise him/her of the date, time and place for the hearing and provide him/her with a copy of the determination procedure;**
- (d) **Request the Member to complete and return the model Pre-Hearing Forms A, B, C, D and E, as recommended by the Standards Board for England or similar as appropriate within 14 days of receipt;**
- (e) **In the light of any Pre-Hearing Forms returned by the Member, determine whether the Hearing Panel will require the attendance of the ESO and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;**
- (f) **Send a copy of the Member's response to the ESO for his/her comments, confirm the time date and place of the hearing and invite the ESO to confirm within 14 days of receipt whether he/she:**
 - (i) wants to be represented at the hearing;
 - (ii) wants to call relevant witnesses to give evidence to the hearing panel;
 - (iii) wants any part of the hearing held in private; and
 - (iv) wants any part of the ESO's report or other relevant documents to be withheld from the public.
- (g) Notify the witnesses who will be required to attend the hearing of the date time and place of the hearing and that their attendance is required.
- (h) *Prepare a Pre-Hearing Summary Report;*
 - (i) Setting out the date, time and place of the hearing;
 - (ii) Summarising the allegation;
 - (iii) Outlining the main facts of the case that are agreed;
 - (iv) Outlining the main facts of the case that are not agreed;
 - (v) Noting whether the Member concerned and the ESO will go to or be represented at the hearing;
 - (vi) Listing those witnesses, if any, who will be asked to give evidence; and
 - (vii) Outlining the proposed procedure for the hearing.

- (i) **Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent, at least two weeks before the hearing, to:**

- (i) All members of the Hearing Panel who will conduct the hearing;*
- (ii) The Member;*
- (iii) The person who made the allegation, and*
- (iv) The ESO.*

Pre-Hearing Process (Local Investigation)

Upon receipt of the final report of the Investigating Officer including a finding that the Member failed to comply with the Code of Conduct or if the Hearing Panel has found under Regulation 17 that a report from the Investigating Officer should be considered at a Hearing Panel, the Monitoring Officer shall:

- (a) Arrange a date for the Hearing Panel to hear the matter⁷;
- (b) Send a copy of the Investigating Officer's report to the Member and advise him/her of the date, time and place for the hearing, provide the Member with a copy of the determination procedure and outline the Member's rights and responsibilities during the hearing process;
- (c) Send a copy of the Investigating Officer's report to the person who made the allegation and advise him/her of the date, time and place for the hearing and provide him/her with a copy of the determination procedure;
- (d) Request the Member to complete and return the model Pre-Hearing Forms A, B, C, D and E, as recommended by the Standards Board for England or similar as appropriate within 14 days of receipt;

⁷ The hearing must normally be conducted within 3 months of the date when the matter is referred by the ESO to the Monitoring Officer (in the case of an ESO investigation) or the date when the Investigating Officer delivers his final report to the Monitoring Officer (in the case of local investigations). There must also be a gap of at least 14 days between the date on which the Monitoring Officer sends the report to the Member, unless the member agrees to the hearing being earlier.

- (e) In the light of any Pre-Hearing Forms returned by the Member, determine whether the Hearing Panel will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion and arrange for their attendance;
- (f) **Send a copy of the Member's response to the Investigating Officer for his/her comments, confirm the time, date and place of the hearing and invite the Investigating Officer to confirm within 14 days of receipt whether he/she:**
 - (i) wants to be represented at the hearing;
 - (ii) wants to call relevant witnesses to give evidence to the hearing panel;
 - (iii) wants any part of the hearing held in private; and
 - (iv) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
- (g) Notify the witnesses who will be required to attend the hearing of the date, time and place of the hearing and that their attendance is required.
- (h) Prepare a Pre-Hearing Summary Report:
 - (i) Setting out the date, time and place of the hearing;
 - (ii) Summarising the allegation;
 - (iii) Outlining the main facts of the case that are agreed;
 - (iv) Outlining the main facts of the case that are not agreed;
 - (v) Noting whether the Member concerned and the Investigating Officer will go to or be represented at the hearing;
 - (vi) Listing those witnesses, if any, who will be asked to give evidence; and
 - (vii) Outlining the proposed procedure for the hearing.
- (i) **Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent, at least two weeks before the hearing, to:**

- (i) All members of the Hearing Panel;*
- (ii) The Member;*
- (iii) The person who made the allegation, and*
- (iv) The Investigating Officer.*

Legal Advice to the Hearing Panel

The Hearing Panel may take legal advice from its Legal Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearing Panel should be shared with the Member and the Investigating Officer if they are present.⁸

Setting the scene at the hearing

At the start of the hearing, the Chair shall introduce each of the members of the Hearing Panel, the Member (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Hearing Panel will follow in the conduct of the hearing.

Preliminary procedural issues

The Hearing Panel shall then deal with the following preliminary procedural matters in the following order:

Disclosures of interest

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

(b) Quorum

The Chair shall confirm that the Hearing Panel is quorate⁹

(c.) Hearing procedure

⁸ In the interests of openness, the Hearing Panel may prefer to receive any such advice in the main hearing room in the presence of the Investigating Officer and the Member. Where this is not practicable, the Legal Adviser should repeat in the presence of the Investigating Officer and the Member the advice which he/she has tendered.

⁹ A meeting of the Hearing Panel is not quorate unless at least three members of the Hearing Panel are present for the duration of the meeting. See the Introduction for further information about the composition of the Panel.

The Chair shall confirm that all present know the procedure which the Hearing Panel will follow in determining the matter.

(d) Proceeding in the absence of the Member

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

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

(e) Exclusion of Press and Public

The Hearing Panel may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chair shall ask the Member, the Investigating Officer and the Legal Adviser or Committee Support Assistant whether they wish to ask the Hearing Panel to exclude the press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Hearing Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Hearing Panel does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

The hearing of the allegation of failure to comply with the Code of Conduct¹⁰

¹⁰ The model procedure recommended by the Standards Board suggests that the Hearing Panel should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. These two are so closely connected that the Hearing Panel may find that it can conveniently determine the two together without any loss of fairness.

The Hearing Panel will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.¹¹

- (a) The Chair shall ask the Member to confirm that he/she maintains the position as set out in the Pre-Hearing Summary Report.
- (b) The Pre-Hearing Process Summary

The Chair will ask the Legal Adviser or the Committee Support Officer¹² to present the Pre-Hearing Summary Report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report.

¹¹ Note that the Hearing Panel's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigating Officer's report. It is possible that, in the course of their consideration, the Hearing Panel apprehends that the Member may have failed to comply with the Code of Conduct in some other manner. Note that such a possible additional or alternative failure will not be within the remit of the Hearing Panel as, at that stage, the Member will not have had notice of the Hearing Panel's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Hearing Panel does apprehend a possible additional or alternative failure, a failure by a different Member, or a failure in respect of the Code of Conduct of another authority, they may refer the second matter to the Monitoring Officer with a view to a separate allegation being made.

¹² **Tasks such as the following will be undertaken by the Legal Adviser or Committee Support Officer as appropriate in the circumstances (and both roles may be performed by the same person):-**

- (i) the conduct of the pre-hearing process;
- (ii) the presentation of an introductory report to the Hearing Panel at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) the giving of legal advice to the Hearing Panel;
- (iv) the recording of the Hearing Panel's determination; and
- (iv) the distribution and publication of any required notices of the Hearing Panel's determination.

- (i). *If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Hearing Panel may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 11).*
 - (ii). *If the Member identifies additional points of difference, the Chair shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Hearing Panel is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Member to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.*
- (c) Presenting the Investigating Officer's report
- (i). *If the Investigating Officer is present, the Chair will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.*
 - (ii). *If the Investigating Officer is not present, the Hearing Panel shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Hearing Panel shall determine on the advice of the Legal Adviser or Committee Support Assistant which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witnesses' attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.*
 - (iii). *No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chair shall ask the Member if there are any matters upon which the Hearing Panel should seek the advice of the Investigating Officer or the witness.*
- (d) The Member's response

- (i). *The Chair shall then invite the Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.*
- (ii). *No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chair shall ask the Investigating Officer if there are any matters upon which the Hearing Panel should seek the advice of the Member or the witness.*

(e) Witnesses

- (i). *The Hearing Panel shall be entitled to refuse to hear evidence from the Investigating Officer, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.*
- (ii). *Any member of the Hearing Panel may address questions to the Investigating Officer, to the Member or to any witness.*

(f) Additional Evidence

At the conclusion of the evidence, the Chair shall check with the members of the Hearing Panel that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- (g) If the Hearing Panel at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Hearing Panel may (on not more than one occasion) adjourn the hearing and make a request to the local Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Hearing Panel.

- (h) Determination as to whether there was a failure to comply with the Code of Conduct.

- (i). *At the conclusion of the Member's response, the Chair shall ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.*
- (ii). *Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 9(b)(i) above), the Hearing Panel shall then retire to another room to consider in private whether the*

Member did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.

- (iii). The Hearing Panel shall take its decision on the balance of probability based on the evidence which it has received at the hearing.*
- (iv). The Hearing Panel's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Member or a witness, or to seek the legal advice. If it requires any further information, it may adjourn on not more than one occasion and instruct an officer or request the Member to produce such further evidence to the Hearing Panel.*
- (v) At the conclusion of the Hearing Panel's consideration, the Hearing Panel shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.*

- (vi) The Hearing Panel shall then return to the main hearing room and the Chair will state the Hearing Panel's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigating Officer's report.*

If the Member has not failed to follow the Code of Conduct

If the Hearing Panel determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report:

- (a) The Chair will announce the Hearing Panel's decision that the Member has not failed to follow the Code of Conduct in respect of the alleged matter. The Chair will then move on to make any other announcements (if appropriate) as follows:*
- (b) If the Hearing Panel apprehends, from the evidence which they have received during the hearing, that the Member may have failed to comply with the Code of Conduct (other than the matter which the Hearing Panel has just determined) and that this potential failure ought to be assessed, the Chair shall outline the Hearing Panel's concerns and state that the Hearing Panel will refer this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the relevant Standards Committee.*
- (c) The Chair should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the Legal Adviser or Committee Support Officer before the Hearing Panel finalises any such recommendations.*

- (d) Finally, the Chair should ask the Member whether he/she wishes the authority not to publish its finding that he/she had not failed to comply with the Code and its reasons for that finding in a local newspaper and (in both cases at the discretion of the Hearing Panel) on the authority's web-site and in any other publication,¹³.

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

¹³ The summary of the Hearing Panel's decision and reasons for it must be published in one or more local newspapers that are independent of the authority, and otherwise as the Hearing Panel directs unless the Hearing Panel finds that the Member did not fail to follow the Code of Conduct, in which case the Member is entitled to ask that there is no such publication.

(a) The Chair will announce the Hearing Panel's decision that the Member has failed to follow the Code of Conduct in respect of the alleged matter and shall ask the Investigating Officer (if present, or otherwise the Legal Adviser or Committee Support Officer) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Hearing Panel should impose a sanction and, if so, what would be the appropriate sanction, or whether the Hearing Panel should take no further action.¹⁴

(b) The Chair will then ask the Member to respond to the advice.

¹⁴ The sanctions which are available to the Hearing Panel under the Standards Committee (England) Regulations 2008 are any of the following either individually or in combination:

- (i) censure of that member (which is the only sanction that may be imposed for a person who has ceased to be a Member);
- (ii) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that such restrictions imposed upon the member -
 - (a) are reasonable and proportionate to the nature of the breach; and
 - (b) do not unduly restrict the person's ability to perform the functions of a member.
- (iii) partial suspension of that member for a period not exceeding six months;
- (iv) suspension of that member for a period not exceeding six months;
- (v) that the member submits a written apology in a form specified by the Hearing Panel;
- (vi) that the member undertakes such training as the Hearing Panel specifies;
- (vii) that the member participate in such conciliation the Hearing Panel specifies;
- (viii) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the Hearing Panel;
- (ix) partial suspension of the member for a period up not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the Hearing Panel specifies;
- (x) suspension of the member for a period not exceeding six three months or until such time as the member has submitted a written apology in a form specified by the Hearing Panel;
- (xi) suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in suchconciliation as the Hearing Panel specifies.

Any sanction imposed shall commence immediately unless the Hearing Panel directs (for any sanction other than censure) that it shall commence on any date specified by the Hearing Panel within six months of the date of the hearing.

- (c) The Chair will then ensure that each member of the Hearing Panel is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.**
- (d) Any member of the Hearing Panel may address questions to the Investigating Officer or to the Member as necessary to enable him/her to take such an informed decision.**
- (e) The Chair should then set out any recommendations which the Hearing Panel is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the Legal Adviser or Committee Support Officer;**
- (f) The Hearing Panel shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Hearing Panel will make to the authority.**
- (g) At the completion of their consideration, the Hearing Panel shall return to the main hearing room and the Chair shall state the Hearing Panel's decisions as to whether (1) to take no further action or (2) to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Hearing Panel will make to the authority.**

Reference back to the Ethical Standards Officer or Investigation Officer

- (a) At any stage prior to the conclusion of the hearing, the Hearing Panel may adjourn the hearing and make a written request, with reasons, to the ESO concerned that the matter be referred back to the ESO for further investigation. If the request is accepted, the hearing panel shall cease its consideration of the matter. If it is not accepted, the Hearing Panel shall continue its consideration of the matter and make no further such requests.**
- (b) At any stage prior to the conclusion of the hearing, the Hearing Panel may adjourn the hearing and, on one occasion only, require the Monitoring Officer to seek further information or undertake further investigation on any point specified by it.**

The close of the hearing

- (a) The Hearing Panel will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;**

(b) The Chair will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;

(c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Hearing Panel's determination, including the finding and the reasons for it, and the Monitoring Officer shall arrange for the distribution of that notice within two weeks of the close of the hearing, to:

(i) the Member

(ii) the Standards Board

(ii) the Investigating Officer and / or the ESO

(iii) the members of the Standards Committee

(iv) The Standards Committee of any other local authority concerned

(v) the Clerk any Parish Council concerned

(vi) the person who made the allegation

and (subject to Paragraph 10(d) if the Member had not failed to follow the Code of Conduct) shall arrange for a summary of the notice to be published in one or more newspapers independent of the council and circulating in the area and (in both cases at the discretion of the Hearing Panel) on the authority's web-site and in any other publication. The notice shall contain the information required by Regulation 20..

Appeals

The Member may seek permission to appeal against the decision of the Hearing Panel and, if appropriate, apply for suspension of any sanction imposed until such time as any appeal is determined, by giving written notice to the President of the Adjudication Panel for England, ensuring that his/her notice sets out

(a) the finding against which he/she seeks to appeal,

(b) whether the appeal is against the finding of failure to comply with the Code of Conduct, the sanction imposed or both,

(c) the grounds of the appeal,

(d) whether any application for suspension of any sanction is made and

(e) whether or not the member consents to the appeal being conducted by way of written representations,

The notice must be received by the President within 21 days of the date of the Member's receipt of the notification of the finding Paragraph 13(a).

