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LOCAL DETERMINATION PROCEDURES

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SECTION 1 GUIDE TO MAIN PROVISIONS

Introduction

- 1.1 Under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, (as amended) Ethical Standards Officers (ESO's) can refer completed investigation reports to a Monitoring Officer for a Standards Committee to determine whether or not a Member has failed to follow the Members' Code of Conduct, and if so, what penalty should be applied, if any. An ESO can also refer an allegation to the Monitoring Officer for local investigation and subsequent consideration by the Standards Committee.
- 1.2 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority, including Co-opted Voting Members and Independent Members of the Authority's Standards Committee when carrying out their duties. The Code represents the standards against which the public, fellow Members, the Standards Board for England and the Authority's Standards Committee will judge a Member's conduct.
- 1.3 This section provides a summary of the procedure for dealing with allegations of misconduct against Members where an investigation has been completed by an ESO or the Monitoring Officer. The procedure takes into account the "Guidance for Monitoring Officers and Standards Committees" issued by the Standards Board for England in 2008.

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Local Determination

- 1.4 Where the Monitoring Officer refers to the Standards Committee either a report received from an ESO, or a report prepared by the Monitoring Officer and which concerns a finding of failure to comply with the Code of Conduct, the Standards Committee shall convene to conduct a hearing in relation to the allegation that the Member failed to comply with the Code of Conduct. A hearing shall likewise be convened if the Standards Committee makes a finding under paragraph 4(f)(iii) of the Procedure for Local Investigation of Referred Complaints that the matter should be considered at a Hearing Panel.
- 1.5 The purpose of the hearing is to decide whether or not a Member has failed to follow the Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.

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Scheduling of Hearing

- 1.6 The Standards Committee is required by law to hold a hearing in relation to an allegation within the period of three months beginning -
- (i) in the case of a report referred by an ESO, on the date on which the Monitoring Officer first received that report or
 - (ii) in the case of a local investigation, on the date on which the report of the Investigating Officer is completed.

The hearing shall not be held until at least fourteen days after the date on which:

- in the case of a report referred by an ESO, the Monitoring Officer sent the report to the Member who is the subject of the allegation or,
- in the case of a report prepared by an Investigating Officer, the report was sent to the member who is the subject of the allegation;

unless, in either case, the Member concerned agrees to the hearing being held earlier.

- 1.7 Except in complicated cases, the Hearing Panel would aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

Pre-Hearing Process for Reports referred by ESO's

- 1.8 The receipt of an ESO's report by the Monitoring Officer triggers the beginning of the pre-hearing process. The pre-hearing process will only deal with procedural issues and is intended to:
- identify whether the Member who the allegation has been made about disagrees with any of the findings of fact in the ESO's report;
 - decide whether or not any such disagreements are significant to the hearing;
 - decide whether or not to hear evidence about those disagreements during the hearing;
 - decide whether or not there are any parts of the hearing that should be held in private; and
 - decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

- 1.9 The pre-hearing process will normally be carried out in writing, although occasionally a face-to-face meeting may be arranged between the Chairman of the Hearing Panel and such Members, officers and witnesses and/or their representatives as the Chairman deems appropriate.
- 1.10 A copy of the ESO's report will be sent to the Member concerned with a request for a written response to find out, amongst other things, whether or not he/she disagrees with any of the findings of fact in the ESO's report and the reasons for any disagreement.
- 1.11 In turn, the ESO will be asked to comment on the Member's written response.
- 1.12 When responses have been received from both the Member concerned and the ESO, written notification will be sent to those involved in the matter at least two weeks before the hearing to:
- set the date, time and place for the hearing;
 - summarise the allegation;
 - outline the main facts of the case that are agreed;
 - outline the main facts which are not agreed;
 - indicate whether the Member concerned and/or the ESO will attend or be represented at the hearing;
 - list those witnesses, if any, who will be asked to give evidence; and
 - outline the proposed procedure for the hearing.

Appointment of Hearing Panel

- 1.13 Following receipt of an ESO's report by the Monitoring Officer or the completion of a report by the Monitoring Officer, which contains a finding of failure to comply with the Code of Conduct, a meeting of the Standards Committee will be convened as soon as practicable to appoint a Hearing Panel to determine the matter. The Panel will comprise 3 or 5 Members of the Standards Committee and will include, if possible, two Independent Members, plus one or more elected Members of the Authority to be appointed by the Committee from a different political party (or parties) to that of the Member concerned. If the complaint is against a parish councillor the Panel must include at least one parish representative.

- 1.14 Where the Standards Committee makes a finding in accordance with paragraph 4(f)(iii) of the Procedure for Local Investigation of Referred Complaints it shall at the same time appoint such a Hearing Panel.
- 1.15 The Standards Committee will appoint an Independent Member to chair the Hearing Panel.

Hearing

- 1.16 The hearing process has been prepared in accordance with the model hearing procedure outlined in the Guidance document issued by the Standards Board for England.
- 1.17 The Hearing Panel will act 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. The Hearing Panel can commission further investigation or information where it needs to do so in order to come to a decision.
- 1.18 It is expected that the Hearing Panel will reach a decision by consensus. In the absence of a consensus, each Member of the Hearing Panel will have one vote and all matters/issues will be decided by a simple majority of votes cast.
- 1.19 Meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.

Findings

1.20 Following its consideration of the matter, the Hearing Panel can make one of the following findings:

- that the Member has not failed to follow the Code of Conduct; or Deleted: Authority's
- that the Member has failed to follow the Code of Conduct, but no action needs to be taken; or Deleted: Authority's
- that the Member has failed to follow the Code of Conduct and should be penalised. Deleted: Authority's

Penalties

1.21 If the Hearing Panel finds that a Member has failed to follow the Code of Conduct and that he/she should be penalised, it may take any one or a combination of the following actions:

- censure the Member (this is the only form of penalty available when dealing with a person who is no longer a Member of the); Deleted: Authority

- restrict the Member's access to the resources of the for up to six months, which could include limiting his/her access to the premises of the provided that those restrictions meet both the following requirements:-

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They are reasonable and proportionate to the nature of the breach; and
They do not unduly restrict the person's ability to perform the functions of a member.

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- a requirement to give a written apology
- a requirement to undergo training;
- suspend or partly suspend the Member for up to six months; or
- suspend or partly suspend the Member for up to six months on the condition that the suspension or partial suspension will end or be reduced if the Member apologises in writing, receives any training, or takes part in any conciliation that the Hearing Panel stipulates. Conciliation involves an independent person helping the relevant individuals to try to reach an agreement on the matter set out by the Hearing Panel.

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Notice of Findings

- 1.22 The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the relevant persons involved.
- 1.23 A summary of the decision and reasons for that decision will be published in one or more local newspapers.

Appeals

- 1.24 A Member may apply in writing to the President of the Adjudication Panel for England for permission to appeal against the determination of a Hearing Panel.
- 1.25 The President must receive the Member's written application within 21 days of the Member receiving notice of the Hearing Panel's decision. In the application, the Member must outline the reasons for the proposed appeal and state whether or not he/she wants the appeal carried out in writing or in person.

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| SECTION 2 | DESCRIPTION OF TERMS |
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Members' Code of Conduct

- 2.1 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority when carrying out their duties.

Complainant(s)

- 2.2 The person(s) making the complaint that a Member has breached the Code of Conduct.

Member

- 2.3 The person against whom the complaint has been made.

Ethical Standards Officer (ESO)

- 2.4 The officer to whom the Standards Board has referred the complaint for investigation and report.

Monitoring Officer and Legal Adviser

- 2.5 The Monitoring Officer, or in his absence the Deputy Monitoring Officer, will be the Legal Adviser to the Hearing Panel.

Investigating Officer

- 2.6 The person appointed by the Monitoring Officer to undertake the investigation of an allegation referred by an ESO for local investigation.

Reporting Officer (applies to cases investigated by an ESO)

- 2.7 If the ESO decides not to attend the Hearing Panel, the Monitoring Officer will appoint a Reporting Officer in respect of the allegation and instruct him/her to report to the Hearing Panel and present the ESO's report. The Reporting Officer may be an officer of the Authority; an officer of another local authority; or some other external appointment.
- 2.8 The Reporting Officer will normally be legally qualified or have access to legal advice. In this process, the function of the Reporting 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, to enable the Panel to come to an informed decision.

Head of Legal and Democratic Services

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- 2.9 The Head of Legal and Democratic Services is the designated Proper Officer for the determination of "exempt information " as defined in Schedule 12A to the Local Government Act 1972.

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Administrative Officer

- 2.10 The Head of Legal and Democratic Services, or his Deputy, and other members of his staff will provide the necessary administrative support to the Hearing Panel.

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"Days"

- 2.11 "Days" include working and weekend days but exclude the day of despatch and public holidays.

Service Arrangements

- 2.12 Correspondence and documents for the Member concerned will either be served personally or by recorded delivery.

SECTION 3 PRE-HEARING PROCESS

PART A - PRE-HEARING ENQUIRIES FOLLOWING REPORTS REFERRED BY ESO's

ESO Report

- 3.1 Where an ESO report is referred to a Monitoring Officer he shall send a copy of the report to any Member who is the subject of the report. The Monitoring Officer shall also arrange for the Authority's Standards Committee to meet to consider that report.

Notification to Member

- 3.2 Within 7 days of the date of the Monitoring Officer's letter, the Administrative Officer will write to the Member concerned to:
- (a) propose a date for a meeting of the Hearing Panel,
 - (b) outline the hearing procedure,
 - (c) outline the Members' rights, and
- 3.3 In addition, the Administrative Officer will ask the Member for a written response, within 14 days, as to whether or not he/she:
- (a) disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreement;

- (b) will attend the hearing in person;
- (c) wants to be represented at the hearing by a solicitor, barrister or any other person;
- (d) wants to give evidence to the Hearing Panel, either verbally or in writing;
- (e) wants to call relevant witnesses to give evidence to the Hearing Panel, together with a summary of the evidence to be given by those witnesses;
- (f) wants any part of the hearing to be held in private, giving reasons under the relevant Article of the European Convention on Human Rights or category of confidential or "exempt information" (*see Appendices Two and Three*); and
- (g) wants any part of the ESO's report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention on Human Rights or category of confidential or "exempt information" (*see Appendices Two and Three*).

Member's Response

- 3.4 In his/her reply, a Member must make clear all of his/her disagreements with the findings of fact in the ESO's report during this pre-hearing stage. This will allow the Chairman of the Hearing Panel, in consultation with the Monitoring Officer, to decide what witnesses will be needed. A Member will normally not be allowed to raise any new disagreements over findings of fact in the ESO's report at the Hearing Panel itself, unless there are good reasons for doing so, such as new evidence becoming available.
- 3.5 Forms to assist the Member to identify such disagreements and to set out evidence relevant to the complaint, together with forms dealing with the arrangements for the hearing are set out in the Guidance issued by the Standards Board.

ESO's Response

- 3.6 The Administrative Officer will send a copy of the Member's response to the Chairman of the Hearing Panel, the Monitoring Officer and to the ESO. The Administrative Officer will also invite the ESO to comment on the Member's response within 14 days, stating whether or not he/she:

- (a) will attend in person or wants to be represented at the hearing;
- (b) wants to call relevant witnesses to give evidence to the Hearing Panel;
- (c) wants any part of the hearing to be held in private , giving reasons under the relevant Article of the European Convention on Human Rights or category of confidential or "exempt information" (*see Appendices Two and Three*); and
- (d) wants any part of his/her report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention on Human Rights or category of confidential or "exempt information" (*see Appendices Two and Three*).

3.7 On receipt of the ESO's response, the Administrative Officer will forward a copy to the Member concerned, the Chairman of the Hearing Panel and the Monitoring Officer.

Arranging the Hearing

3.8 If the ESO indicates that he/she does not propose to attend or be represented at the hearing, the Administrative Officer will immediately send a copy of the ESO's Report, the Member's response and the ESO's response to the Reporting Officer (appointed by the Monitoring Officer). Where the ESO has not already expressed a view on the following matters, the Administrative Officer will invite the Reporting Officer to state within 7 days whether or not he/she:

- (a) wants to call relevant witnesses to give evidence to the hearing;
- (b) wants any part of the hearing to be held in private , giving reasons under the relevant Article of the European Convention on Human Rights or category of confidential or "exempt information" (*see Appendices Two and Three*); and
- (c) wants any part of the ESO's report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention on Human Rights or category of confidential or "exempt information" (*see Appendices Two and Three*).

3.9 Once the ESO's or Reporting Officer's response has been received, the Chairman of the Hearing Panel, in consultation with the Monitoring Officer, will agree the date, time and place for the Hearing Panel and which witnesses will be needed to give evidence.

PART B - REPORTS FOLLOWING LOCAL INVESTIGATION

Notification to Member

3.10 Where either:-

- (i) a final report of an Investigating Officer which contains a finding of failure to comply with the Code of Conduct is sent to the Member concerned, or
- (ii) the Member concerned is notified of a decision of the Standards Committee under paragraph 4(f)(iii) of the Procedure for Local Investigation of Referred Complaints

the Administrative Officer will, within 7 days of the report or notification having been sent, write to the Member concerned to:

- (a) propose a date for a meeting of the Hearing Panel,
- (b) outline the hearing procedure,
- (c) outline the Member's rights.

In addition the Administrative officer will ask the Member concerned to indicate within 14 days whether or not he/she:

(a) disagrees with any of the findings of fact in the Investigating Officer's Report ,including the reasons for any disagreement;

(b) will attend the hearing in person,

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(c) wants to be represented at the hearing by a solicitor, barrister or any other person,

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(d) wants to give evidence to the Hearing Panel, either orally or in writing,

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(e) wants to call relevant witnesses to give evidence to the Hearing Panel and if so to give a summary of the evidence to be given by those witnesses,

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(f) wants any part of the hearing to be held in private, giving reasons under the relevant Article of the European Convention on Human rights or category of confidential or exempt information (see Appendices Two and Three)

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(g) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention of Human Rights or category of confidential or "exempt information".

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3.11 In his/her reply a Member must make clear all of his/her disagreements with the findings of fact in the Investigating Officer's report during this pre-hearing stage. This will allow the Chairman of the Hearing Panel ,in consultation with the Monitoring Officer ,to decide what witnesses will be needed. A Member will normally not be allowed to raise any new disagreements over findings of fact in the Investigating Officer's report at the Hearing Panel itself, unless there are good reasons for doing so, such as new evidence becoming available.

3.12 Forms to assist the Member to identify such disagreements and to set out evidence relevant to the complaint, together with forms dealing with the arrangements for the hearing are set out in the Guidance issued by the Standards Board.

3.13 When the response of the Member concerned has been received, or, if no response is received, once the 14 day period has elapsed, for responding the Chairman of the Hearing Panel in consultation with the Monitoring Officer will agree the date, time and place for the hearing.

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| SECTION 4 | PRE-HEARING PROCESS - GENERAL |
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Advance Notification of Hearing

4.1 At least 14 days before the hearing, the Administrative Officer will give notification of the date, time and venue set for the hearing to those involved. He will also inform the Member concerned of the membership of the Panel which will consider the matter and identify the Reporting Officer, if the ESO or his/her representative will not be attending the hearing (in the case of a report referred by an ESO).

Agenda for Hearing

- 4.2 At least 7 days before the day of the meeting of the Hearing Panel, the Administrative Officer will send the following papers to each Member of the Panel, to the Member concerned, to the ESO, Reporting Officer or Investigating Officer (whoever is attending the hearing) and the Monitoring Officer:
- (a) the agenda for the meeting of the Hearing Panel;
 - (b) a copy of the ESO's report or Investigating Officer's report, as the case may be (unless already provided); and
 - (c) where relevant, a copy of any written statement in response to the ESO's report or Investigating Officer's report received from the Member and the ESO's or Investigating Officer's reply to the Member's response.
- 4.3 The provision of any such papers referred to in paragraph 4.2 may be made conditional upon an appropriate undertaking of confidentiality until such time as they are made available to the press and public or the Hearing Panel agrees at the commencement of the hearing that the press and public shall not be excluded from the meeting.
- 4.4 Any additional documents intended to be relied on and/or referred to at the hearing must be provided to the Administrative Officer at least 3 days before the date of the Hearing.

Public Access to Hearing and Documents

4.5 There is a presumption that hearings will be held in public and that reports for the Hearing Panel will be available before and during the hearing. However, there may be reasons, as detailed in **Appendix One**, which would prevent public access to the hearing (or part of the hearing) and documents (or parts of documents) to be considered by the Hearing Panel.

Confidentiality in advance of Hearing

4.6 Where the Head of Legal and Democratic Services, considers that the ESO's report _and/or the Member's written statement in response and/or the ESO's _reply to that response is likely to disclose "exempt information", and in consequence that it is likely that the Hearing Panel will not be open to the public during consideration of these papers, he/she shall not provide copies of these papers` to the press or public or permit inspection thereof by the press or public in advance of the meeting.

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4.7 Where the Head of Legal and Democratic Services considers that the ESO's report _and/or the Member's written statement in response and/or the ESO's _reply to that response is likely to disclose "exempt information" falling within _Schedule 12A to the Local Government Act 1972, he will not provide copies of such papers to, nor permit inspection by any Member of the Authority other than the Members of the Hearing Panel and the Member concerned in advance of the meeting.

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4.8 "Exempt information" is defined in Schedule 12A of the Local Government Act 1972 as set out in **Appendix Two**.

4.9 References in sub-paragraphs 4.6 and 4.7 above to "the ESO's report" shall be taken to include the report of an Investigating Officer received by the Monitoring Officer, in accordance with the Authority's Procedure for Local Investigation of Referred Complaints.

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SECTION 5 HEARING PROCEDURE

Legal Advice

5.1 The Hearing Panel may at any time seek legal advice from the Monitoring Officer during the hearing or while the Panel considers the outcome. Such advice will on all occasions be given in the presence of the ESO/Reporting Officer and the Member.

Member Attendance or Representation

5.2 The Member may arrange to be represented or accompanied at the hearing at his/her own expense by a solicitor, counsel or another person.

5.3 If the Member does not attend the hearing, the Hearing Panel may consider the ESO's report in the Member's absence. If the Panel is satisfied with the Member's reason for not being able to attend the hearing, then it may arrange for the hearing to be held on another date.

- 5.4 Where the Hearing Panel proceeds in the absence of the Member, the procedure for the meeting shall be adapted as necessary, giving any representative of the Member who may be present such rights as would otherwise be accorded to the Member concerned.

Order of Business

- 5.5 The order of business at the meeting shall be as follows:

- (a) Disclosures of interest. The Chairman will invite Members to declare any interest they may have in the matter.
- (b) Introduction of Members of the Hearing Panel, the ESO or Reporting Officer or Investigating Officer, the Monitoring Officer, the Member against whom a complaint has been made and any representative of the Member, plus any witnesses.
- (c) If the Member is not present, consideration as to whether to adjourn or to proceed in his/her absence.
- (d) Consideration as to whether the press and public should be excluded from the meeting. The Panel will take into account any representations from the ESO/Reporting Officer and/or the Member concerned or his/her representative with reasons why the Panel should make such an exclusion.
- (e) A note of the issues which the Hearing Panel will have to consider in deciding whether or not to exclude the press and public is set out in **Appendix Three**.
- (f) The Panel will then make a determination on whether to exclude the press and public. Where the Panel decides not to exclude the press and public, the Administrative Officer will at this point provide copies of such relevant documentation to any members of the press and public who are present.
- (g) Presentation of ESO's report. This will be done by the Reporting Officer in the absence of the ESO. In the case of a local investigation the Investigating Officer will present his/her own reports. The ESO/Reporting Officer/Investigating Officer will address only the issue of whether the Member has acted in breach of the Code of Conduct. The ESO/Reporting Officer/Investigating Officer may introduce any witnesses required to substantiate any matter. Members of the Panel may question the ESO/Reporting Officer/Investigating Officer and any witness on any matter within their competence. There will be no cross-examination by the Member, but the Member may request the Chairman to direct appropriate questions to the ESO/Reporting Officer/Investigating Officer or to any witness whom he/she has introduced.

- (h) Presentation by Member. The Member or his/her representative will address only the issue of whether he/she has acted in breach of the Code of Conduct. The Member or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement (where relevant). Members of the Panel may question the Member and any witness on their evidence. There will be no cross-examination by the ESO/ Reporting Officer/Investigating Officer, but the ESO/Reporting Officer/Investigating Officer may request the Chairman to direct appropriate questions to the Member or to any witness whom he/she has introduced.
- (i) Where the hearing is dealing with an ESO's report or Investigating Officer's report and the Member seeks to dispute any matter in the report which he/she had not given notice of intention to dispute in his/her written statement, the ESO/Reporting Officer or Investigating Officer will draw this to the attention of the Hearing Panel. The Panel may then decide:
- (i) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
 - (ii) to admit the dispute, but invite the ESO/Reporting Officer or Investigating Officer to respond thereto, recalling any witness as necessary; or
 - (iii) to adjourn the meeting to enable the ESO/Reporting Officer or Investigating Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (j) Members of the Panel have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the ESO/Reporting Officer or Investigating Officer, the Member concerned and any witness in order to obtain sufficient information to enable the Panel to come to a decision on the issue.
- (k) The Panel will adjourn into another room with the Monitoring Officer, where it will consider in private session whether the Member has acted in breach of the Code of Conduct. At any stage in its consideration they may return to ask any further questions of the ESO/Reporting Officer/Investigating Officer or the Member, or seek legal advice.
- (l) At the conclusion of its consideration, the Panel will return and the Chairman will advise the ESO/Reporting Officer/Investigating Officer and the Member or his/her representative of its decision as to whether the Member has

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acted in breach of the Code of Conduct, and the reasons for that decision.

- (m) If the Panel concludes that the Member has acted in breach of the Code of Conduct, it will then hear representations from the ESO/Reporting Officer/Investigating Officer and then the Member as to whether the Panel should take any action against the Member and what form any action should take. Members of the Panel may ask questions of the ESO/Reporting Officer/Investigating Officer and the Member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.
- (n) The Panel will then adjourn into another room together with the with the Monitoring Officer where they will consider in private session whether to take any action in respect of the Member and what form any such action should take.

The sanctions available to the Panel are set out in **Appendix Four**. The Panel will then return and the Chairman will advise the Member of its decision.

Non-Co-operation

- 5.6 Where the ESO/Reporting Officer/Investigating Officer states that any Member or Officer of the Authority has failed to co-operate wholly or in part with the procedure, the Panel will consider whether to make a formal complaint to the Standards Committee, or to the employing authority, respectively, about such failure to co-operate.

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Costs

- 5.7 Where the ESO/Reporting Officer/Investigating Officer secures the attendance of any person to give evidence to the Panel, the Authority will reimburse any reasonable costs which the person may incur in so attending.

Additional Evidence

- 5.8 A Standards Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Standards Committee; but the Standards Committee shall not adjourn the hearing on more than one occasion under these provisions.
- 5.9 A Standards Committee may at any stage prior to the conclusion of the hearing adjourn the hearing and make a written request to the ESO concerned that the matter be referred back to the ESO for him to

undertake an investigation; and any such request must set out the committee's reasons for making it.

- 5.10 Where a matter is referred to an ESO, the ESO must respond to the request within 21 days of its receipt and may -
- (a) direct that the matter be referred to him for investigation, in which case the Standards committee shall cease its consideration of the matter; or
 - (b) direct that the Standards Committee shall continue to deal with the matter, in which case the Standards Committee shall do so and shall not make any further request in respect of that matter.
- 5.11 Where an ESO gives a direction under 5.10 (b), the Standards Committee shall convene to continue its consideration of the matter within three months of the receipt of the ESO's direction.

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| SECTION 6 | NOTICE OF FINDINGS OF HEARING PANEL AND CONFIDENTIALITY OF INFORMATION |
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Report to Standards Committee

- 6.1 As soon as reasonably practicable after the Hearing Panel has made its determination in respect of an allegation, the Monitoring Officer will give written notice of that determination and the reasons for such determination to:
- (a) the Member who is the subject of that determination;
 - (b) the Ethical Standards Officer concerned;
 - (c) the Standards Committee;
 - (d) the Standards Committee of any other local authority of which the Member is, or was at the time of the alleged misconduct, a Member; and
 - (e) any person who made the allegation that gave rise to the investigation; and

subject to paragraph 6.2 below, arrange for a summary of the finding to be published in one or more newspapers circulating in the area of the Authority or Authorities concerned.

- 6.2 Where the Hearing Panel determines that there has not been a breach of the Code of Conduct:

(a) the notice under paragraph 6.1 will state that the Panel found that the Member concerned had not failed to comply with the Code of Conduct of the ~~_____~~ and will give its reasons for reaching that finding; and

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(b) if the Member concerned so requests, the Monitoring Officer will not publish a summary of the finding in any local newspaper.

6.3 Where the Hearing Panel determines that there has been a failure to comply with 6.1 the notice will:

(a) state that the Hearing Panel found that the Member concerned had failed to comply with Code of Conduct of the ~~_____~~ or the Code of Conduct of another ~~_____~~ but that no action needs to be taken in respect of that failure;

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(b) specify the details of the failure;

(c) give reasons for the decision reached by Hearing Panel; and

(d) state that the Member concerned may apply for permission to appeal against the determination.

6.4 Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice under paragraph 6.1 will:

(a) state that the Hearing Panel found that the Member concerned had failed to comply with the Code of Conduct of the ~~_____~~ or the Code of Conduct of another ~~_____~~;

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(b) specify the details of the failure;

(c) give reasons for the decision reached by the Hearing Panel;

(d) specify the sanction imposed, and

(e) state that the Member concerned may apply for permission to appeal against the determination.

Appeal Arrangements

6.5 Details of the appeal arrangements are set out in **Appendix Five**.

Confidentiality

- 6.6 No Member or Officer of the Authority shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out below:
- (a) the disclosure is made for the purposes of enabling the ESO/Reporting Officer//Monitoring Officer/Investigating Officer to carry out his/her functions or the Hearing Panel to carry out its functions in relation to the matter;
 - (b) the disclosure is made in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
 - (c) the disclosure is made in connection with any other steps the Monitoring Officer may be directed to take by an ESO in connection with an allegation of a breach of an authority's code of conduct;
 - (d) the disclosure is made enabling a Standards Committee or sub-committee of a Standards Committee to perform any of its functions in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
 - (e) the disclosure is made enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a Standards Committee or sub-committee of a Standards Committee in connection with an allegation of a breach of an authority's code of conduct;
 - (f) the disclosure is made to enable an Appeals Tribunal to discharge its functions;
 - (g) the person to whom the information relates had consented to the disclosure;
 - (h) the disclosure is made in pursuance of a statutory requirement for disclosure;
 - (i) the information has previously been disclosed to the public with lawful authority;
 - (j) the disclosure is made to the Audit Commission or District Auditor for the purposes of any function of the audit Commission under the Audit Commission act 1998; or

- (k) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

APPENDIX ONE

PUBLIC ACCESS TO HEARINGS AND DOCUMENTS

In accordance with the recommendation of the Standards Board for England hearings will be held in public where possible to make sure that the hearing process is open and fair.

Confidential information and 'exempt information'

- 1 There are two circumstances in which hearings (or parts of hearings) can or should be held in private.
 - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
 - (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the *Local Government Act 1972* (see Appendix 2). However, regulations also provide for three additional categories of 'exempt information' in relation to local determination meetings.
 - (i) Information which is subject to any obligation of confidentiality.
 - (ii) Information which relates in any way to matters concerning national security.
 - (iii) The deliberations of a Standards Committee or sub committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.
- 2 The rules about confidential information are different from the rules about 'exempt information'. Hearing Panels must hold some parts of a meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

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Deciding to withhold 'exempt information'

- 3 The Hearing Panel will carefully consider any decision to withhold exempt information from the public. The Standards Board for England has advised that Hearing Panels should follow Article 6 of the *European Convention on Human Rights*, as there may be an obligation to do so under Section 6(1) of the *Human Rights Act 1998*. The Hearing Panel has a duty to act fairly and in line with the rules of natural justice.
- 4 Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved.
- 5 If the Hearing Panel decides to exclude the public to prevent 'exempt information' being revealed, it will only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal exempt information', the public will only have to be excluded while that witness is giving evidence.
- 6 If evidence is heard in private, the Chairman of the Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

Access to documents

- 7 As a general principle, the agenda and reports to be discussed at a Hearing Panel will be available to the public before and during a hearing. The ESO's report [or Investigating Officer's report](#) will be one of the reports before the Hearing Panel.
- 8 However, the [Head of Legal and Democratic Services](#), has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private. The Standards Board for England has recommended that this power should be exercised where one of the people involved has requested that a document be kept confidential.
- 9 After a hearing, sections of the Hearing Panel's reports, which relate to parts of the hearing held in private, will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.
- 10 When considering whether or not to exclude the public from a hearing, the Hearing Panel will also need to say which parts of the reports before the hearing are not to be made available for public inspection.
- 11 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, will be available for public inspection for a specific period of up to six years after that hearing has taken place.

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APPENDIX TWO

“EXEMPT INFORMATION”

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

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes -
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 7A** Information which is subject to any obligation of confidentiality.
- 7B** Information which relates in any way to matters concerning national security.
- 7C** The deliberations of a Standards Committee or sub committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

Source: Appendix 2 is an extract from the Local Government Act 1972 (as modified in relation to local determination by Standards Committees).

APPENDIX THREE

EXCLUSION OF PRESS AND PUBLIC

ISSUES FOR CONSIDERATION

- 1 At the meeting, the Hearing Panel will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.

- 2 The Hearing Panel must act in accordance with Article 6 of the European Convention on Human Rights, which gives a right to a fair and public hearing by an independent and impartial tribunal. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the "trial" in the interests of:
 - (a) Morals
 - (b) public order
 - (c) national security in a democratic society
 - (d) where the interests of juveniles or the protection of the private life of the parties so require or
 - (e) in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Member or ESO/Reporting Officer can demonstrate overriding reasons within one of these five headings for the press and public to be excluded.

- 3 Article 8 of the European Convention on Human Rights provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Hearing Panel) with the exercise of this right except such as is:
 - (a) in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972), and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security
 - (ii) public safety

- (iii) the economic well-being of the country
- (iv) the prevention of crime or disorder
- (v) the protection of health and morals (which would include the protection of standards of conduct in public life) or
- (vi) the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence, so that the presumption of a public hearing set out in Article 6 would appear to come within the exception set out in paragraph (b)(v) above, unless either the ESO/Reporting Officer or the Member demonstrates to the Hearing Panel's satisfaction that a public hearing is not necessary for that purpose and that the interest of protecting the privacy of the Member or of the ~~Authority~~ should over-ride that public interest.

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- 4 Where the Hearing Panel concludes that the interest of protecting the privacy of the Member or of the Authority should over-ride the public interest in a public hearing, the Hearing Panel remains bound by the provisions of the Local Government Act 1972, as primary legislation, so that it may only exclude press and public from all or part of the meeting if it is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case, the Hearing Panel has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
- 5 Where the Hearing Panel does not resolve to exclude the press and public from the meeting, the ~~Head of Legal and Democratic Services~~ will then be required to provide copies of the agenda and reports to the press and public and other members of the Authority, and to permit inspection of any background papers.

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APPENDIX FOUR

SANCTIONS AVAILABLE TO THE HEARING PANEL

A Sanctions available in respect of a Member who has ceased to be a Member at the date of the meeting

Censure of the Member

B Sanctions available in respect of a Member who remains a Member at the date of the meeting

Any one, or a combination, of the following:

1 Censure of the Member

2 Restriction for a maximum period of six months of that Member's access to the premises of the Authority and that Member's use of the resources of the Authority, provided that any such restrictions imposed upon the Member -

Deleted: three

(a) are reasonable and proportionate to the nature of the breach; and

(b) do not unduly restrict the Member's ability to perform his functions and duties as a Member;

3 Partial suspension of the Member for a maximum period of six months;

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4 Suspension of that Member for a period up to a maximum of six months;

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5 A requirement that that Member submit a written apology in a form specified by the Standards Committee;

6 A requirement that that Member undertake training as specified by the Standards Committee;

7 A requirement that that Member undertake conciliation as specified by the Standards Committee;

8 Partial suspension of that Member for a period up to a maximum of six months or until such time as he submits a written apology in a form specified by the Standards Committee;

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9 Partial suspension of that Member for a period up to a maximum of six months or until such time as he undertakes such training or conciliation as the Standards Committee may specify;

Deleted: three

| 10 Suspension of that Member for a period up to a maximum of six months or until such time as he submits a written apology in a form specified by the Standards Committee; Deleted: three

| 11 Suspension of that Member for a period up to a maximum of six months or until such time as he undertakes such training or conciliation as the Standards Committee may specify; Deleted: three

Any sanction imposed shall commence immediately upon the determination of the Hearing Panel, unless the Hearing Panel determine that a sanction comprised within paragraphs 2 to 11 above will commence on such date as it may determine, being no later than 6 months after the date of the determination.

C Sanctions available in respect of a Member who has failed to comply with a Local Protocol

Any one or a combination of the following:

- 1 Censure of the Member
- 2 Prohibition of access to the Authority's premises or from using the Authority's resources, except as necessary to conduct the Member's duties as an elected councillor
- 3 Recommending to full Council that the Member be removed from any relevant positions to which he/she has been appointed by the Council such as Leader, the Executive, Committees or sub-committees or from outside appointments

APPENDIX FIVE

APPEAL ARRANGEMENTS

Appeals to The Adjudication Panel for England

- 1 The Member who is the subject of a Hearing Panel finding may apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding.
- 2 The President must receive the Member's written application within 21 days of the Member receiving notice of the Hearing Panel's decision. In the application, the Member must outline the reasons for the proposed appeal and whether or not he/she wants the appeal carried out in writing or in person.
- 3 When deciding whether or not to grant permission to appeal, the President will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or in part.
- 4 The President will give the Member concerned his/her written decision within 21 days of receiving the application. The President will also give his/her written decision to:
 - the ESO concerned;
 - the Standards Committee that made the original finding;
 - the Standards Committees of any other authorities concerned; any parish councils concerned; and
 - any person who made the allegation.
- 5 If the President refuses to give permission, he/she will explain the reasons for that decision.

Appeal Tribunals

- 6 If permission is granted, the President of The Adjudication Panel for England will arrange for a tribunal to deal with the Member's appeal. The tribunal will be made up of at least three members appointed by the President and may include the President.
- 7 Any member of The Adjudication Panel for England with an interest in the matter may not be a member of the appeal tribunal. Likewise, any member of The Adjudication Panel for England who has been a member or officer of the Authority within the last five years cannot take part.

- 8 If the Member does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the Member at least 21 days' notice of the date of the hearing.
- 9 The Member can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the Member wants to have a non-legal representative, he/she must get permission from the tribunal beforehand, who may prevent that person acting as a representative if he/she is directly involved in the case.
- 10 The appeal tribunal can decide its own procedures. It is likely, however, that both the ESO and the Hearing Panel will be given the opportunity to make representations in relation to the appeal and, in an appropriate case, to go to or be represented at the appeal hearing.
- 11 If the Member agrees to have the appeal carried out in writing, the tribunal may still decide to hold a hearing at which the Member can attend in person and be represented as outlined above. However, the tribunal may choose to carry out the appeal entirely through written representations.
- 12 If, after being given reasonable notice, the Member fails to go to or be represented at an appeal hearing, the tribunal may determine the matter in the Member's absence. However, if the tribunal is satisfied that there is a good reason for the Member's absence, it could postpone the hearing to another date.

Outcome of the appeal

- 13 The appeal tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the Hearing Panel.
- 14 If the tribunal upholds the Hearing Panel's finding, or part of the finding, it may:
 - approve the penalty set by the Hearing Panel;
 - require the Hearing Panel to set a penalty if it has not already done so; or
 - require the Hearing Panel to set a different penalty to that already set.
- 15 If the tribunal dismisses the finding of the Hearing Panel, the decision and any resulting penalty will no longer apply. The Hearing Panel must act on any directions given by the appeal tribunal.

Notice of the appeal tribunal's decision

- 16 The appeal tribunal will give written notice of its decision to:
- the Member who is the subject of the decision;
 - the ESO concerned;
 - the Hearing Panel that made the original finding;
 - the Standards Committees of any other authorities concerned;
 - any parish councils concerned; and
 - any person who made the allegation.
- 17 The tribunal will also publish a summary of its decision in one or more of the newspapers circulating in the area of the authorities concerned.

Costs

- 18 Members are responsible for meeting the cost of any representation at a hearing or appeal tribunal, including the attendance of anyone requested by them to attend.

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