

PROCEDURE FOR LOCAL DETERMINATION OF ALLEGATIONS AGAINST COUNCILLORS

1. Introduction and Summary

This note sets out the procedure which will be followed in the local determination of allegations of misconduct by Councillors. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

Where the Monitoring Officer receives an allegation that a Councillor has breached the Authority's Code of Conduct for Members, he must report the allegation to a Sub-Committee of the Standards Committee comprising 3 Members. 1 Member of the Sub-Committee shall be one of its Independent Members. In the event of an allegation against a Parish Councillor, 1 Member of the Sub-Committee must be a Parish representative. The Sub-Committee shall meet to determine whether or not the complaint should be investigated further within 20 working days of receipt of the complaint. The Monitoring Officer's report to the Sub-Committee shall be exempt and Press and Public will be excluded from the meeting.

The Monitoring Officer shall notify the complainant of the decision of the Standards Sub-Committee within 14 days of the meeting. In the event of the Standards Sub-Committee deciding that the allegation did not merit investigation, the complainant shall have the right of appeal which may be exercised by requesting that the Council reviews its decision. Any such request must be received within 14 days of receipt by the complainant of notification that his complaint will not be investigated.

Upon being requested to arrange a review, the Monitoring Officer shall convene a meeting of a Sub-Committee of the Standards Committee comprising 3 Members who played no part in the original decision. 1 of the Members shall be an Independent Member who will usually take the Chair. In the event of the complaint relating to a Parish Council matter, a Parish representative who was not involved in the original decision shall also form 1 of the Sub-Committee. The Monitoring Officer shall present to the Review Sub-Committee, a copy of his original report, the Minutes of the original Sub-Committee meeting and the complainants written request for review. The complainant shall be entitled to attend the Sub-Committee and make oral and further written representations as to why his request for a review should be upheld.

Investigation

Once a Sub-Committee or a Review Sub-Committee have determined that a complaint against a Councillor shall be investigated, the Monitoring Officer must make arrangements for an investigation to be undertaken. Unless the Sub-Committee, after taking advice from the Monitoring Officer, indicate that the matter is potentially so serious that it should be referred to the Standards Board for England, any investigation will be undertaken locally either by the Monitoring Officer, or more commonly, by the person appointed by the Monitoring Officer.

Determination of a Complaint

Within 3 months of the Investigating Officer completing his investigations and submitting a report to the Monitoring Officer, the Monitoring Officer must arrange for the Standards Committee (or a Sub-Committee of the Standards Committee convened for the purpose) to consider the Investigating Officer's report. The Standards Committee (or its Sub-Committee) will then hold a formal hearing to determine whether a breach of the Authority's Code of Conduct has occurred and whether any action should be taken as a consequence. 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 Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the Authority's Code of Conduct for Members, and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and able to commission further investigation or information where it needs to do so in order to come to a decision.

Where the Standards Committee determines, after considering the Reporting Officer's report, that it does appear to show that a breach of the Authority's Code of Conduct has occurred, the Standards Committee will give the Councillor concerned the opportunity to make representations to it before it makes any final decision as to whether there has actually been a breach of the Authority's Code of Conduct. Where the Standards Committee determines that the Councillor has acted in breach of the Authority's Code of Conduct, the Committee will hear representations from the Reporting Officer and from the Councillor as to any action which the Committee should take in respect of the Councillor, and will consider whether any action should be taken by the Authority to rectify any consequences of the misconduct or to prevent any further breaches.

The actions which the Standards Committee may take against the Councillor may include censuring the Councillor, suspending or partially suspending the Councillor from being a Member of the Authority for a period not exceeding six months or until he apologises for the misconduct, and the withdrawal of access to the Authority's facilities.

2. **Notification of Reference of Allegation to the Monitoring Officer (where the Investigating Officer) has completed his investigation**

(a) Appointment of Reporting Officer

Upon receipt of the allegation and report from an Investigating Officer, the Monitoring Officer will appoint a Reporting Officer in respect of the allegation and instruct him/her to report thereon to the Authority's Standards Committee or a Sub-Committee of the Standards Committee. The Reporting Officer may be an officer of the Authority (including the Monitoring Officer unless he is conflicted out from acting as Reporting Officer), an officer of another local authority, or an external consultant.

(b) Notification to the Councillor

The Reporting Officer will then notify in writing the Councillor against whom the allegation is made:-

- (i) that he/she has received the allegation and provide him with a copy of the Investigating Officer's report;
- (ii) of the procedure which will be followed in respect of the allegation;
- (iii) of the identity of the Reporting Officer;
- (iv) that, if he/she seeks at the meeting of the Standards Committee or Sub-Committee to dispute any matter contained in the Investigating Officer's report without having previously identified/notified the Reporting Officer of his/her intention to do so, the Standards Committee or Sub-Committee may either adjourn the meeting to enable the Reporting Officer to arrange the attendance of any witnesses necessary to give evidence on that matter or refuse to allow the Councillor to dispute that matter and take their decision on the basis of the matter as set out in the Investigating Officer's report.

(c) In notifying the Councillor of the reference of the allegation, the Reporting Officer shall request the Councillor within the next 14 days to:-

- (i) notify the Reporting Officer of the identity of any person whom the Councillor wishes to represent him/her at the meeting of the Standards Committee or Sub-Committee;
- (ii) provide the Reporting Officer with a written statement in which the Councillor sets out his/her response to the report, including whether he/she admits that the alleged breach did occur, and sets out any matter which the Councillor wishes to be sent to the Members of the Standards Committee or Sub-Committee at the same time as the report;
- (iii) notify the Reporting Officer of any matter contained in the Investigating Officer's report which the Councillor proposes to dispute at the meeting of the Standards Committee, in order to enable the Reporting Officer to arrange the attendance at the meeting of the Standards Committee or Sub-Committee of any witnesses necessary to provide evidence in respect of that matter; and

- (iv) notify the Reporting Officer of any witnesses whom he/she proposes to call to give evidence before the Standards Committee or Sub-Committee.
- (d) *Notification to the Parish or Town Council Clerk*

Where the allegation relates to the conduct of a Member of a Parish or Town Council in his/her capacity as such, at the same time as notifying the Councillor, the Reporting Officer will notify the Clerk of the Parish or Town Council concerned in writing of the matters set out in paragraphs 2(b)(i) and (ii) above.

- (e) The Reporting Officer shall then provide to the Chief Executive a copy of the Investigating Officer's report and of any response received from the Councillor within the said 14 days, together with a list of any witnesses whom the Reporting Officer will wish to call before the Standards Committee, and request the Chief Executive to arrange a meeting of the Standards Committee.

3. Arranging the Meeting of the Standards Committee or Sub-Committee

- (a) Upon receipt of a request from the Reporting Officer under paragraph 2(e) the Chief Executive shall arrange a time and date for the Standards Committee (or the Sub-Committee of the Standards Committee which will determine the allegation) to meet and consider the matter.
- (b) At least 5 clear days before the date of the meeting of the Standards Committee or Sub-Committee, the Chief Executive shall notify the Councillor of the date, time and place of the meeting and the membership of the Standards Committee or Sub-Committee at which the matter will be considered.
- (c) At least 5 clear days before the day of the meeting of the Standards Committee or Sub-Committee, the Chief Executive will send to each Member of the Standards Committee or Sub-Committee, to the Councillor, to the Reporting Officer and to any person who made the allegation which gave rise to the investigation, but may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until such time as the Chief Executive makes the report available to the press and public or the Standards Committee or Sub-Committee agree that the press and public shall not be excluded from the meeting:-
 - (i) the agenda for the meeting of the Committee or Sub-Committee;
 - (ii) a copy of the Investigating Officer's report, and;
 - (iii) a copy of any written statement in response to the report which has been received from the Councillor.
- (d) At the same time the Chief Executive will write to the Councillor and advise him/her that, at the commencement of the meeting, the Committee will consider whether the press and public should be excluded from the meeting.
- (e) **Background Papers**

The Chief Executive will, upon request, provide or arrange for any Member of the Committee or Sub-Committee (as appropriate) and the Councillor to have access to any background documents as have been identified or supplied by the Reporting Officer at any reasonable time between the issue of the agenda and the time of the meeting.

- (f) Confidentiality in advance of the Meeting
 - (i) Where the Chief Executive considers that the Investigating Officer's report and/or the Councillor's written statement in response is likely to disclose "exempt information", and in consequence that it is likely that the Committee or Sub-Committee will, during consideration of these papers, not be open to the public, 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.
 - (ii) Where the Chief Executive considers that the Investigating Officer's report and/or the Councillor's written statement in response is likely to disclose "exempt information" falling within Paragraphs 1 to 6, 9, 11, 12 or 14 of Schedule 12A to the Local Government Act 1972, he/she shall not provide copies of these papers to, nor permit inspection thereof by, any Member of the Authority other than the Members of the Committee or Sub-Committee and the Councillor in advance of the meeting.

4. **Procedure at the Meeting**

- (a) Attendance of the Councillor
 - (i) The Councillor may arrange to be accompanied at the meeting at his/her own expense by a solicitor, counsel or friend.
 - (ii) If the Councillor is not present at the start of the meeting, the Committee or Sub-Committee shall adjourn to enable the Councillor to attend, unless they are satisfied that there is sufficient reason for the failure of the Councillor to attend, in which case the Committee or Sub-Committee may resolve to proceed in the absence of the Councillor. Where the Committee or Sub-Committee proceeds in the absence of the Councillor, the procedure for the meeting shall be adapted as necessary, giving any representative of the Councillor who is present such rights as would otherwise be accorded to the Councillor.
- (b) Order of business

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

- (i) Quorum. The Chief Executive or his/her representative shall confirm that the Committee is quorate;
- (ii) disclosures of interest;
- (iii) consideration as to whether to adjourn or to proceed in the absence of the Councillor, if the Councillor is not present;
- (iv) introduction of the Committee, Chief Executive (or his/her representative), the legal adviser to the Committee, the Reporting Officer and the Councillor and any representative of the Councillor;
- (v) any representations from the Reporting Officer and/or the Councillor as to reasons why the Committee or Sub-Committee should exclude the press and public and determination as to whether to exclude the press and

public (where the Committee or Sub-Committee decides that it will not exclude press and public, the Chief Executive shall at this point provide copies of the agenda and reports to any members of the press and public who are present);

- (iv) presentation by the Reporting Officer of the Investigating Officer's report.
- (v)
- (vi) The Reporting Officer shall at this stage address only the issue of any disputes of fact relevant to the matters under consideration. The Reporting Officer may introduce any witnesses required to substantiate any matter contained in that report which the Councillor has disputed in his/her written statement in response. Members of the Committee or Sub-Committee may question the Reporting Officer and any witness on any matter within their competence. There shall be no cross-examination by the Councillor, but the Councillor may request the Chair of the Meeting to direct appropriate questions to the Reporting Officer or to any witness whom he/she has introduced;
- (vii) presentation by the Councillor.
- (viii) The Councillor or his/her representative shall at this stage address only the issue of any disputes of fact relevant to the matters under consideration. The Councillor or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response. Members of the Committee or Sub-Committee may question the Councillor and any witness on their evidence. There shall be no cross-examination by the Reporting Officer, but the Reporting Officer may request the Chair of the Meeting to direct appropriate questions to the Councillor or to any witness whom he/she has introduced.
- (viii) where the Councillor seeks to dispute any matter in the Investigating Officer's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Reporting Officer shall draw this to the attention of the Committee. The Committee may then decide:-
 - (a) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
 - (b) to admit the dispute, but invite the Reporting Officer to respond thereto, recalling any witness as necessary; or
 - (c) to adjourn the meeting to enable the Reporting Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (ix) at the conclusion of the presentation by the Councillor, the Chair shall ask the Reporting Officer whether there was any matter raised during the course of that presentation which was not raised in the Councillor's written statement in response. The Reporting Officer may then respond to any such new matter, or may request the Committee or Sub-Committee to adjourn to enable him/her to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;
- (x) the Committee or Sub-Committee is required to come to a decision on any disputes of fact relevant to the matters under consideration. Accordingly,

they have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Reporting Officer, the Councillor and any witness in order to obtain sufficient information to enable the Committee or Sub-Committee to come to a decision on this issue.

- (xi) the Committee or Sub-Committee will adjourn into another room with the Chief Executive or his/her representative where they will consider in private session any disputes of fact relevant to the matters under consideration. At any stage in their consideration they may return to ask any further questions of the Reporting Officer or the Councillor or to seek legal advice;
- (xii) the Committee or Sub-Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Reporting Officer and the Councillor;
- (xiii) at the conclusion of their consideration, the Committee or Sub-Committee will return and the Chair will advise the Reporting Officer and the Councillor of their decision on any disputes of fact relevant to the matters under consideration, and the reasons for that decision;
- (xiv) Having determined disputes of fact the Committee will then consider whether the Councillor has acted in breach of the Code of Conduct.
- (xv) Presentation by the Reporting Officer of the Investigating Officer's report. The Reporting Officer shall at this stage address only the issue of whether the Councillor has acted in breach of the Code of Conduct. The Reporting Officer may introduce any witnesses required to substantiate any matter contained in that report which the Councillor has disputed in his/her written statement in response. Members of the Committee or Sub-Committee may question the Reporting Officer and any witness on any matter within their competence. There shall be no cross-examination by the Councillor, but the Councillor may request the Chair of the meeting to direct appropriate questions to the Reporting Officer or to any witness whom he/she has introduced;
- (xvi) Presentation by the Councillor. The Councillor or his/her representative shall at this stage address only the issue of whether he/she has acted in breach of the Code of Conduct. The Councillor or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response. Members of the Committee or Sub-Committee may question the Councillor and any witness on their evidence. There shall be no cross-examination by the Reporting Officer, but the Reporting Officer may request the Chair of the meeting to direct appropriate questions to the Councillor or to any witness whom he/she has introduced.
- (xvii) Where the Councillor seeks to dispute any matter in the Investigating Officer's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Reporting Officer shall draw this to the attention of the Committee. The Committee may then decide:-
 - (a) Not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;

- (b) to admit the dispute, but invite the Reporting Officer to respond thereto, recalling any witness as necessary; or
 - (c) to adjourn the meeting to enable the Reporting Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (xviii) At the conclusion of the presentation by the Councillor, the Chair shall ask the Reporting Officer whether there was any matter raised during the course of that presentation which was not raised in the Councillor's written statement in response. The Reporting Officer may then respond to any such new matter, or may request the Committee or Sub-Committee to adjourn to enable him/her to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;
- (xix) The Committee or Sub-Committee is required to come to a decision as to whether the Councillor acted in breach of the Code of Conduct. Accordingly, they have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Reporting Officer, the Councillor and any witness in order to obtain sufficient information to enable the Committee or Sub-Committee to come to a decision on this issue.
- (xx) The Committee or Sub-Committee will adjourn into another room with the Chief Executive or his/her representative where they will consider in private session whether the Member has acted in breach of the Code of Conduct. At any stage in their consideration they may return to ask any further questions of the Reporting Officer or the Councillor or to seek legal advice;
- (xxi) The Committee or Sub-Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Reporting Officer and the Councillor;
- (xxii) At the conclusion of their consideration, the Committee or Sub-Committee will return and the Chair will advise the Reporting Officer and the Councillor of their decision as to whether the Councillor has acted in breach of the Code of Conduct, and the reasons for that decision;
- (xxiii) if the Committee or Sub-Committee conclude that the Councillor has acted in breach of the Code of Conduct, the Committee or Sub-Committee will then hear representations from the Reporting Officer and then the Councillor as to whether the Committee or Sub-Committee should take any action against the Councillor and what form any action should take. Members of the Committee or Sub-Committee may ask questions of the Reporting Officer and the Councillor and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision;
- (xxiv) the Committee or Sub-Committee will then adjourn into another room together with the Chief Executive or his/her representative where they will consider in private session whether to take any action in respect of the Councillor and what form any such action should take. The actions

available to the Committee or Sub-Committee are set out in Appendix Three to this procedure. The Committee or Sub-Committee will then return and the Chair will advise the Councillor of their decision as to whether to take any action in respect of Councillor and what action they have decided to take and the reasons for those decisions;

(xxv) where the Committee or Sub-Committee is considering allegations relating to a Member of that Authority, the Committee or Sub-Committee shall then consider in open session whether there are any recommendations which the Authority should make arising from consideration of the allegation, for example for providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or related matters, for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the Authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct.

(xxvi) where the Committee is considering allegations relating to a Member of another Authority, the Committee or Sub-Committee shall then consider in open session whether there are any recommendations which the Committee or Sub-Committee should make to the Authority of which the Councillor is a Member arising from their consideration of the allegation, for example for providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or local protocol or related matters, for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in that Authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol.

(c) Non-Co-operation

Where the Reporting Officer has reported that any officer or Councillor of a local authority has failed to co-operate with the procedure, the Committee or Sub-Committee shall consider whether to make a formal complaint to the employing authority about such failure to co-operate or in the case of a councillor whether to request the Monitoring Officer to arrange an investigation into any potential breach of the Code of Conduct.

(d) Costs

Where the Reporting Officer secures the attendance of any person to give evidence to the Committee or Sub-Committee, he/she may pay to any such person such fees or allowances as he/she considers to be appropriate subject to any limits set by the Authority.

5. Reporting of the Decision of the Standards Committee or Sub-Committee

(a) As soon as reasonably practicable after the Committee or Sub-Committee has made its determination in respect of an allegation, the Chief Executive shall take reasonable steps to give written notice of that determination and the reasons for such determination to:-

- (i) the Member who is the subject of that determination;
- (ii) the Investigating Officer's concerned;
- (iii) the Standards Committee of any other local authority of which the Councillor is, or was at the time of the alleged misconduct, a Member; and
- (iv) any person who made an allegation that gave rise to the investigation; and

subject to paragraph 5(b), arrange for a summary of the finding to be published in one or more newspapers circulating in the area of the authorities concerned.

- (b) Where the Committee or Sub-Committee determine that there has not been a breach of the Code of Conduct, the notice under paragraph 5(a) shall:-

- (i) state that the Committee or Sub-Committee found that the Councillor concerned had not failed to comply with the Code of Conduct of the Authority concerned or the Code of Conduct of any other authority concerned and shall give its reasons for reaching that finding; and
- (ii) not be published in summary in one or more local newspapers in accordance with paragraph 5(a), if the Councillor concerned so requests.

- (c) Where the Committee or Sub-Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice under paragraph (5)(a) shall:-

- (i) state that the Committee or Sub-Committee found that the Councillor concerned had failed to comply with Code of Conduct of the authority concerned or the Code of Conduct of any other authority concerned but that no action needs to be taken in respect of that failure;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached by the Committee or Sub-Committee; and
- (iv) state that the Councillor concerned may apply for permission to appeal against the determination.

- (d) Where the Committee or Sub-Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:-

- (i) state that the Committee or Sub-Committee found that the Councillor concerned had failed to comply with the Code of Conduct of the authority concerned or the Code of Conduct of any other authority concerned;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached by the Committee or Sub-Committee;

- (iv) specify the sanction imposed; and
- (v) state that the Councillor concerned may apply for permission to appeal against the determination.

6. Assistance to the Reporting Officer

- (a) Where the Reporting Officer arranges for the attendance of any person as a witness at the meeting, he/she may pay to that person a sum to cover any reasonable costs which the person may incur in so attending.

7. Confidentiality

- (a) 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 in Paragraph 7(b) below;
- (b) The circumstances referred to above shall be as follows:
 - (i) the disclosure is made for the purposes of enabling the Reporting Officer to carry out his/her functions or the Standards Committee to carry out its functions in relation to the matter;
 - (ii) the disclosure is made to enable an Appeals Tribunal to discharge its functions;
 - (iii) the person to whom the information relates has consented to the disclosure;
 - (iv) the disclosure is made in pursuance of a statutory requirement for disclosure;
 - (v) the information has previously been disclosed to the public with lawful authority;
 - (vi) 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
 - (vii) 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.

