



NOTICE OF MEETING

Standards Committee - Determination Hearing Panel

WEDNESDAY, 2ND DECEMBER, 2009 at 10:00 HRS - CIVIC CENTRE, HIGH ROAD,
WOOD GREEN, N22 8LE.

COUNCILLOR Councillors Santry and Williams
MEMBERS:

INDEPENDENT Ms. Sykes, Mr. Lovegrove and Ms. Loyd
MEMBERS:

AGENDA

- 1. APOLOGIES FOR ABSENCE (IF ANY)**
- 2. ELECTION OF THE CHAIR OF THE DETERMINATION HEARING PANEL FOR THE DURATION OF THE PROCEEDINGS**
- 3. DECLARATIONS OF INTERESTS**

A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

A member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgment of the public interest **and** if this interest affects their financial position or the financial position of a person or body as described in paragraph 8 of the Code of Conduct **and/or** if it relates to the determining of any approval, consent, licence, permission or registration in relation to them or any person or body described in paragraph 8 of the Code of Conduct.

4. PROCEDURAL MATTERS

- i. Outline of Hearing
- ii. The Determination Hearing Panel will be recommended to exclude the Public and Press in order to consider the lifting of the exempt classification on certain documents to be considered at this hearing, circulated as exempt documents.

Please note that the documents if released will be in a redacted form.

5. EXCLUSION OF THE PUBLIC AND PRESS

The following item is likely to be subject of a motion to exclude the press and public from the meeting as it contains exempt information as defined in Section 100a of the Local Government Act 1972; namely information relating to any individual, and information which is likely to reveal the identity of an individual, and information subject to legal privilege; and also in accordance with the Standards Committee (England) Regulations 2008 (regulation 5), and Section 53 of the Local Government Act 2000.

6. CONSIDERATION OF RELEASE OF EXEMPT INFORMATION WITHIN THE PUBLIC DOMAIN DURING THE PUBLIC PART OF THE PROCEEDINGS

7. RE-INCLUSION OF THE PUBLIC AND PRESS

8. DETERMINATION OF COMPLAINT SC002/089 (PAGES 1 - 158)

Documents for consideration

- (i) Report of the Monitoring Officer
- (ii) Pre-Hearing process summary
- (iii) Agenda contents list detailing summary of documentation
- (iv) Appendices 1 to 5

9. CONSIDERATION OF ANY ADDITIONAL PROCEDURAL POINTS

10. DELIBERATIONS OF THE HEARING PANEL ON DISPUTED MATTERS OF FACT

The Panel, having heard the representations of the parties concerned and considered the evidence, including any witnesses, will then deliberate.

All parties other than the Panel Members, Legal Adviser to the Panel, and Committee Manager will withdraw from the proceedings.

All parties will be invited back in to the proceedings. The Chair of the Determination Hearing will give the decision of the Panel.

11. DELIBERATION OF THE HEARING PANEL AS TO WHETHER ON THE FACTS THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

The Panel, having heard the representations of the parties concerned and considered the evidence, including any witnesses, will then deliberate.

All parties other than the Panel Members, Legal Adviser to the Panel, and Committee Manager will withdraw from the proceedings.

All parties will be invited back in to the proceedings. The Chair of the Determination Hearing will give the decision of the Panel.

12. DELIBERATIONS OF THE HEARING PANEL AS TO SANCTION TO BE IMPOSED IN THE EVENT THAT A FAILURE TO COMPLY IS FOUND

The Panel, having considered Form C and heard the representations of the parties concerned will then deliberate.

All parties other than the Panel Members, Legal Adviser to the Panel, and Committee Manager will withdraw from the proceedings.

All parties will be invited back in to the proceedings. The Chair of the Determination Hearing will give the decision of the Panel.

13. RECOMMENDATIONS TO THE COUNCIL

The Panel will consider representations from the investigating officer and will decide whether to make any recommendations to the Council with a view to promoting a high standard of conduct.

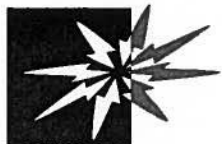
14. SUMMARY WRITTEN DECISION

The Panel will provide a short summary decision in writing. A full written decision will be approved by all Panel Members as soon as practicable and will be communicated to the parties.

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Deputy Head of Local Democracy and Member
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24 November 2009



Haringey Council

Agenda item:

[No.]
DETERMINATION HEARING PANEL ON 2 DECEMBER 2009

Report Title: Local Determination Hearing into Complaint of Failure to Comply with the Members' Code of Conduct (Ref SC2/089)

Report of: The Head of Legal Services and Monitoring Officer

Wards(s) affected: All

Report for: Decision

1. Purpose and Recommendation

1.1 The Panel is convened to hear and determine the complaint in accordance with the local procedure rules and guidance from the Standards Board

Report Authorised by: John Suddaby, Head of Legal Services and Monitoring Officer

Contact Officer: Terence Mitchison, Principal Project Lawyer Corporate

Telephone: 020 8489 5936 email: terence.mitchison@haringey.gov.uk

2. Local Government (Access to Information) Act 1985

2.1 This report is exempt from publication as it contains exempt information in the attachments under paragraphs 1, 2 and 5 of Part 1 of Schedule 12 to the Local Government Act 1972 namely information revealing or likely to reveal the identity of individuals and information subject to legal professional privilege.

3. Report

3.1 This Hearing Panel was established to determine this complaint (ref SC2/089) at the special meeting of the Standards Committee on 9 September 2009.

3.2 The Pre-Hearing Process Summary attached to this report sets out the background, the pre-hearing process, the matters agreed, the matters in dispute and issues likely to arise including the extent to which the hearing should be held in public and the

exempt documents be made public.

3.3 The covering agenda summarises the steps in the hearing procedure. The full hearing procedure is the first document in Appendix 1.

4. Comments of the Chief Financial Officer

4.1 There are no direct financial implications.

5. Comments of the Head of Legal Services

5.1 This report is from the Head of Legal Services and Monitoring Officer

6. Equalities Implications

6.1 There are no specific implications

7. Use of Appendices

- 7.1 (i) The Pre-Hearing Process Summary
- (ii) The Agenda Contents List
- (iii) 5 Appendices – contents summarised in (ii)

By virtue of paragraph(s) 1, 2, 5, 7c of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is exempt

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By virtue of paragraph(s) 1, 2, 5, 7c of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is exempt

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APPENDIX 1 - PROCEDURAL DOCUMENTS PUBLIC

Procedure for hearing allegations of breach of the Members' Code of Conduct by the Standards Committee or a Hearing Sub-Committee

Interpretation

1. "Subject Member" means the member of the Council who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the subject member's nominated representative. Where the hearing involves a complaint against more than one member then this includes all the subject members.
2. "Investigator" means the Monitoring Officer (MO) who referred the investigator's report to the Committee, and includes the MO's nominated representative. In the case of matters that have been referred to the MO or the Committee by an Ethical Standards Officer (ESO), the "investigator" mean the ESO or other appointed investigating officer, and his/her nominated representative.
3. "Committee" means the Standards Committee and includes to a Hearing Sub-Committee of the Standards Committee. Action taken by the Chair shall be deemed to be authorised by the Committee unless the Committee by majority vote determines otherwise at any time. When it is necessary or desirable to amend or amplify this Procedure, the Committee will take into account representations from the parties and its legal advisor but the Committee will determine all questions relating to procedure and the admission of evidence.
4. "Legal advisor" means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or a lawyer appointed for this purpose from outside the Council.

Preliminary Matters

Date for Hearing

5. The date and time for the hearing shall be determined by an officer appointed by the Head of Local Democracy and Member Services in consultation with the Committee members, the subject member and the investigator. In the event that agreement between these persons cannot be reached within a reasonable time, the officer shall determine the date and time in consultation with the Chair of the Committee.

Attendance

6. If the subject member or the investigator fails to attend the Committee at the date and time fixed for the hearing, the Committee shall decide whether to proceed in their absence or whether to adjourn to another date having regard to any representations made by, or on behalf of, the absent party and any party present and any advice from the legal advisor. There will be a presumption that the hearing should proceed in the absence of a party who has had reasonable prior written notice of the date and time unless there are exceptional circumstances.

Representation

7. The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another non-legally-qualified person.

Two or more Subject Members

8. If there are two or more subject members, then the Committee will agree such modifications to this procedure as will allow each subject member to be separately represented, if he/she so wishes, and to be given a separate opportunity to make representations and ask questions of witnesses. Any representations and evidence specific to one/some subject members, but not other subject members, shall be properly and separately considered.

Legal advice

9. The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the subject member and the investigator if they are present.

Setting the scene

10. After all the members of the Committee and everyone involved have been formally introduced, the Chair should explain how the Committee is going to run the hearing.

Preliminary procedural issues

11. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

12. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

13. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.

14. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The Committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

15. The subject member should then have the opportunity to make representations to support his/her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

16. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the subject member.

17. If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

18. If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the hearing. After considering the subject member's explanation for not raising the issue at an earlier stage, the Committee may then:

a) continue with the hearing, relying on the information in the investigator's report;

b) allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or

c) postpone the hearing to arrange for appropriate witnesses to be present.

19. The Committee will usually move to another room to consider the representations and evidence in private.

20. On their return, the Chair will announce the Committee's findings of fact.

Did the Subject Member fail to follow the Code?

21. The Committee then needs to consider whether or not, based on the facts it has found, the subject member has failed to follow the Code of Conduct.

22. The subject member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.

23. The Committee should then consider any verbal or written representations from the investigator.

24. The Committee may, at any time, question anyone involved on any point they raise in their representations.

25. The subject member should be invited to make any final relevant points.

26. The Committee will then move to another room to consider the representations.

27. On their return, the Chair will announce the Committee's decision as to whether or not the subject member has failed to follow the Code of Conduct.

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

28. If the Committee decides that the subject member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Council.

If the Subject Member has failed to follow the Code

29. If the Committee decides that the subject member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the subject member as to:

- a) whether or not the Committee should set a penalty; and
- b) what form any penalty should take.

30. The Committee may question the investigator and subject member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

31. The Committee will then move to another room to consider whether or not to impose a penalty on the subject member and, if so, what the penalty should be.

32. On their return, the Chair will announce the Committee's decision.

Recommendations to the Council

33. After considering any verbal or written representations from the investigator, the Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

The written decision

34. The Committee will announce its decision on the day of the hearing and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft as soon as practicable after the hearing before memories fade.

THE CODE OF CONDUCT

Guide for members
May 2007

Confidence in local democracy

 the
Standards Board
for England

2.

General obligations under the Code of Conduct

Treating others with respect

See Paragraph 3(1)

You must treat others with respect.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

Complying with equality laws

See Paragraph 3(2)(a)

You must not do anything which may cause your authority to breach any equality laws.

Equality laws prohibit discrimination on the grounds of sex, race, disability, religion or belief, sexual orientation and age.

The provisions of these laws are complex. In summary, there are four main forms of discrimination:

- Direct discrimination: treating people differently because of their sex, race, disability, religion or belief, sexual orientation or age.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their sex, race, disability, religion or belief, sexual orientation or age, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of sex, race, disability, religion or belief, sexual orientation or age, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.

- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Equality laws also impose positive duties to eliminate unlawful discrimination and harassment and to promote equality. They also impose specific positive duties on certain authorities.

Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct.

Bullying and intimidation

See Paragraphs 3(2)(b) and 3(2)(c)

You must not bully any person including other councillors, council officers or members of the public.

Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

This can be contrasted with the legitimate challenges which a member can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

It is important that you raise issues about poor performance in the correct way and proper forum. However, if your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code of Conduct.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

Compromising the impartiality of officers of the authority

See Paragraph 3(2)(d)

You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority.

You should not approach or pressure anyone who works for, or on behalf of, the

authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.


Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Disclosing confidential information

See Paragraph 4(a)

You must not disclose confidential information, or information which you believe to be of a confidential nature, except in any of the following circumstances:

- You have the consent of the person authorised to give it.
- You are required by law to do so.


GUIDANCE FROM STANDARDS BOARD
FOR ENGLAND - JULY 2003

45

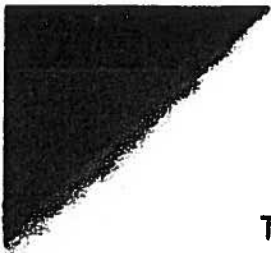
APPENDIX 4**Excluding the public from hearings**

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

- 1 At the hearing, the committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees). If the committee considers that 'confidential information' is likely to be revealed during the hearing, the committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
 - 2 The committee also has the power to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed in Appendix 3. The committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The committee also has a duty to act fairly and in line with the rules of natural justice.
 - 3 Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:
 - a morals;
 - b public order;
 - c justice;
 - d national security in a democratic society; or
 - e protecting young people under 18 and the private lives of anyone involved.
-

Standards Committee determinations
Guidance for monitoring officers and Standards Committees

- 4 There should be a public hearing unless the committee decides that there is good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
 - 5 The committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and...necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.
 - 6 Conflicting rights often have to be balanced against each other. The committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the committee) may interfere with this right unless it is:
 - a In line with the law; and
 - b necessary in a democratic society in the interests of:
 - i national security;
 - ii public safety;
 - iii the economic wellbeing of the country;
 - iv preventing crime or disorder;
 - v protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - vi protecting people's rights and freedoms.
-



There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

7 In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary in a democratic society'. A measure will only be 'necessary' if it meets 'a pressing social need', and any restriction on people's rights must be 'proportionate'.

8 The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

STANDARDS COMMITTEE DETERMINATIONS

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2 STANDARDS COMMITTEE DETERMINATIONS

introduction

This guidance is designed to help members and officers in relevant authorities who are involved in the determination of complaints that a member may have breached the Code of Conduct. It reflects the Standards Committee (England) Regulations 2008 (the regulations). These regulations are mandatory and this guidance must be taken into account by your authority.

It details each stage of the determination of complaints process and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required. The guide is aimed primarily at members of standards committees and monitoring officers, but will also provide a useful reference tool for all members and officers involved in the determination of complaints.

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

Each authority must develop effective procedures to fulfil its legislative requirements. Members and officers involved in the determination of complaints must take this guidance into account when doing so.

Any reference in this guidance to a standards committee includes a reference to sub-committees established to consider a monitoring officer's investigation report and to consider determination hearings. Any reference to the "subject member" is a reference to the member who is the subject of the complaint that the Code of Conduct may have been breached.

You can contact the Standards Board for England on 0845 078 8181 or email enquiries@standardsboard.gov.uk

introduction

Regulations

The Standards Board for England has issued this guidance to reflect the Standards Committee (England) Regulations 2008 (the regulations) in respect of holding determination hearings. These regulations derive from the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007.

The regulations set out the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct. Under the regulations, standards committees must take this guidance into account.

The regulations do not cover joint working between authorities. The government plans to issue further regulations to provide a framework for authorities to work jointly on the assessment, referral, investigation and hearing of complaints of misconduct by their members.

Background

The main purpose of the standards committee's determination hearing is to decide whether a member has breached the Code of Conduct and, if so, to decide if a sanction should be applied and what form the sanction should take. All complaints that a member may have breached the Code are assessed by the relevant authority's standards committee.

The standards committee must establish a sub-committee (the assessment

sub-committee) which is responsible for assessing complaints that a member may have breached the Code. A complainant may make a request for a review of the standards committee's decision where it decides to take no further action on a complaint. The standards committee must establish a review sub-committee which is responsible for carrying out these reviews.

The standards committee should appoint a sub-committee (the consideration and hearing sub-committee) to consider a monitoring officer's investigation report and to hold determination hearings. This sub-committee must be chaired by an independent member of the standards committee.

On completion of an investigation the monitoring officer must make one of the following findings:

- There has been a failure to comply with the Code.
- There has not been a failure to comply with the Code.

They must write an investigation report and send a copy of it to the subject member. Alternatively, where a Standards Board ethical standards officer has completed an investigation and decided that a complaint should be determined by the standards committee, they will refer their report to the monitoring officer.

The monitoring officer must refer the report to the standards committee. A consideration and hearing sub-committee should be appointed to receive and consider such reports.

consideration meetings

If the investigator, in their report, finds no failure to comply with the Code of Conduct, the standards committee must decide whether to accept that recommendation. The standards committee must also decide whether it or the Adjudication Panel for England should hear the case. This preliminary decision must be formally made and recorded.

A meeting of the standards committee to consider the monitoring officer's investigation report must be convened under Regulation 17 of the regulations. Regulation 8(6) allows the consideration of any information presented for that purpose to be considered as exempt information.

As with all exempt information decisions, the standards committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When advising on this matter the monitoring officer should consider the effect of Regulation 17(4). This regulation allows the subject member to prohibit the publication of a notice, stating that the standards committee has found that there has been no failure to comply with the Code.

Despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a meeting. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the meeting. In most cases, the public interest

in transparent decision-making by the standards committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined.

A member of the standards committee who considers and overturns a monitoring officer's finding that there has been no failure to comply with the Code may participate in a subsequent hearing.

This meeting to consider the monitoring officer's investigation report provides a useful opportunity for the standards committee to consider the potential issues which might arise during the pre-hearing process.

This consideration meeting is separate to the meeting at which the hearing is conducted. If the investigation report finds that there has been a failure to comply with the Code a hearing must take place – unless the standards committee decides that the matter should be referred to the Adjudication Panel for England for determination.

hearings

Timing of the standards committee hearing

Under Regulation 18 of the regulations, a standards committee must hear a complaint within three months of the date on which the monitoring officer's report was completed. If the investigation was carried out by an ethical standards officer, the standards committee must hear the complaint within three months of the date that the monitoring officer received the ethical standards officer's report.

As with a meeting to consider a monitoring officer or ethical standards officer's report, when the standards committee is convened for a hearing under Regulation 18 it is also subject to Regulation 8(6).

When assessing whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, monitoring officers similarly need to consider the effect of Regulation 20(2). This allows the subject member to prohibit normal publication of the committee's notice of the finding of no failure to comply with the Code of Conduct.

As before, despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a hearing. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the hearing. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member's interest in

limiting publication of an unproven allegation that has not yet been determined.

In most cases all parties will agree that the hearing should take place in public. It is sensible to seek the views of the relevant parties as early as possible to allow for legal advice to be sought if required.

If the standards committee decides that a hearing is appropriate they should give a copy of the report to:

- the subject member
- the clerk of any relevant town or parish council
- the standards committees of any other authorities concerned

The hearing must take place at least 14 days after the subject member receives a copy of the report from the monitoring officer. However, the hearing can be held sooner than 14 days after the member receives a copy of the report if the subject member agrees.

The standards committee may consider the report in the subject member's absence if the subject member does not go to the hearing. If the standards committee is satisfied with the subject member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

If the standards committee does not hear the matter within three months of receiving the completed report, it must ensure that the matter is heard as soon as possible after that.

hearings

Scheduling a hearing

Except in the most complicated cases, standards committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

When scheduling hearings, standards committees should bear in mind that late-night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

The pre-hearing process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

Other than in very straightforward cases, authorities should use a pre-hearing process to:

- identify whether the subject member disagrees with any of the findings of fact in the investigation report
- identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- identify whether evidence about those disagreements will need to be heard during the hearing

- decide whether there are any parts of the hearing that are likely to be held in private
- decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the standards committee, the relevant parties and their representatives may be necessary. It is important for the monitoring officer advising the standards committee to consider pre-hearing matters carefully.

Some matters in the pre-hearing process may be decided only by the standards committee or consideration and hearing sub-committee (if one is appointed). Therefore, if it is necessary for the standards committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the monitoring officer or other suitable officer.

Key points for the pre-hearing process

The officer providing administrative support to the standards committee should write to the subject member proposing a date for the hearing, and they should do this in consultation with the chair of the standards committee.

hearings

They should also outline the hearing procedure, the member's rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- wants to be represented at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the standards committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

It is important for standards committee members involved in the pre-hearing process to bear in mind the distinction between the essential facts of the case and any inferences based on those facts. A critical part of the pre-hearing process should be an attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them.

This is because attention to the factual issues will save valuable time later on in the determination process.

The standards committee should start this process by requesting that the subject member makes clear precisely what findings of fact in the report it disagrees with and why.

It should invite the monitoring officer or ethical standards officer to comment on the subject member's response within a set time period. This is to ensure that all parties are clear about the remaining factual disputes and can prepare to deal with those issues on the appointed day.

The standards committee should also ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the standards committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing.

It should only allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. The standards committee should make clear to the subject member that unless they comply with the above procedure, it may rule that it will not allow the new evidence to be presented at the hearing.

hearings

Members of the standards committee should consider the evidence provided to them before the hearing to identify any potential conflicts of interest.

In addition they should consider the evidence to identify any connection with the people involved or any other doubts they have over the integrity of the hearing. If they have such concerns, they should seek advice from the monitoring officer as soon as possible. For example, they may know a witness who will be giving controversial evidence or they may have an interest in an important element of the case.

The determinations toolkit features model forms that can help the member respond to the standards committee. It includes a form to identify any findings of fact that the member disagrees with – **Form A**. It also includes a form to outline any further evidence for the standards committee – **Form B**.

The standards committee may also arrange for any other witnesses to be present who they feel may help in determining the case. This may include the complainant. However, the standards committee cannot order witnesses to appear or give evidence.

Pre-hearing process summary

The standards committee's clerk should consult with the committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing. This should be done after the standards

committee has received responses from the subject member and from the investigating officer. The pre-hearing process summary should:

- 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
- note whether the subject member or investigating officer will go to the hearing or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the standards committee to make a ruling on this at the hearing
- outline the proposed procedure for the hearing

You can find a checklist for this pre-hearing process summary document in the toolkit – **Form F**.

The hearing

Members should bear in mind that a standards committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

hearings

The standards committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The standards committee should bear in mind the need to maintain public confidence in the council's ethical standards. This requires that the standards committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months.

Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If the subject member concerned wants to have a non-legal representative, the subject member must obtain the consent of the standards committee.

The standards committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The standards committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the standards committee may not need to consider any evidence other than the investigation report or the ethical standards officer's report, and any other supporting documents. However, the standards committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The standards committee can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer, the ethical standards officer or their representative. Alternatively, the standards committee can ask that these questions be directed through the chair. The standards committee can also question witnesses directly.

Witnesses

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

hearings

The standards committee has the right to govern its own procedures as long as it acts fairly. For this reason, the standards committee may limit the number of witnesses if the number is unreasonable.

The standards committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Authorities may wish to consider developing a witness care scheme. At the very least, witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Standards committees should recognise that subject members also need to be kept fully apprised of the process and any changes to it. Some authorities appoint an officer as a point of contact with the subject member for the duration of the process.

Sanctions

If the standards committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- censure of that member
- restriction for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions meet **both** the following requirements:
 - i) They are reasonable and proportionate to the nature of the breach.
 - ii) They do not unduly restrict the person's ability to perform the functions of a member.
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- that the member submits a written apology in a form specified by the standards committee
- that the member undertakes such training as the standards committee specifies
- that the member participates in such conciliation as the standards committee specifies

hearings

- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:

- i) They have submitted a written apology in a form specified by the standards committee.
- ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:

- i) They have submitted a written apology in a form specified by the standards committee.
- ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

Suspension or partial suspension will normally start immediately after the standards committee has made its decision. However, if the standards committee chooses, the sanction may start at any time up to six months following its decision. This may be appropriate if the sanction would otherwise have little effect on the subject member. For example, in the case of a suspension or partial suspension where there are no authority or committee meetings which the subject member would normally go to in the period

after the hearing has finished. The standards committee should also confirm the consequences, if any, for any allowances the subject member may be receiving.

Periods of suspension or partial suspension set by a standards committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 1972.

Considering the sanction

When deciding on a sanction, the standards committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the standards committee should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention? Did the subject member know that they were failing to follow the Code of Conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?

hearings

- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a subject member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the subject member.

Suspension may be appropriate for more serious cases, such as those involving:

- trying to gain an advantage or disadvantage for themselves or others
- dishonesty or breaches of trust
- bullying

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

The following is an extract from useful guidance published by the Adjudication Panel for England on aggravating and mitigating factors they take into account when assessing an appropriate sanction:



Examples, but not an exhaustive list, of mitigating factors are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.

hearings

- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

“ Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

The Adjudication Panel for England also advises the following:

“ In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

findings

Notice of the standards committee's findings

The standards committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the standards committee will normally also draft minutes of the meeting.

The standards committee must give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within two weeks of the hearing.

The relevant parties are:

- the subject member
- the complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Standards Board for England

Making the findings public

The standards committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper that is independent of the authorities concerned. The newspapers where the decision and reasons are published should be circulated in the area of the authorities involved. A summary of the decision may also be published on the website of any authorities concerned, and

in any other publication if the standards committee considers it appropriate.

If the standards committee finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the subject member is also entitled to decide that no summary of the decision should be passed to local newspapers.

If the standards committee finds that the subject member failed to follow the Code but that no action is needed, the public summary must:

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the standards committee's decision not to take any action
- state that the member may appeal against that finding

If the standards committee finds that a member failed to follow the Code and it imposed a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened

findings

- explain what sanction has been imposed
- give reasons for the decision made by the standards committee
- state that the member may appeal against that finding

The standards committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Written decision format

For consistency and thoroughness, standards committees should use the following format for their full written decisions.

The front cover of the standards committee's full written decision should include the name of the:

- authority
- subject member
- complainant
- standards committee member who chaired the hearing
- standards committee members who took part in the hearing
- monitoring officer
- ethical standards officer who referred the matter (if applicable)
- local investigator who investigated the matter (if applicable)
- clerk of the hearing or other administrative officer

It should also include:

- case reference numbers from the principal authority and from the Standards Board for England, (if applicable)
- the date of the hearing
- the date of the report

The standards committee's full written decision should include:

- a summary of the complaint
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the finding as to whether the member failed to follow the Code, including the reasons for that finding
- the sanctions imposed, if any, including the reasons for any sanctions
- the right to appeal

suspensions

The Local Government Act 2000 enables the Adjudication Panel for England and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct. But, it does not specify exactly what members can and cannot do in their official capacity during the term of suspension.

This has led to confusion in some authorities as to what representative roles, if any, a suspended member can perform. It has also led to confusion over what council facilities they are allowed to use and what entitlements they can continue to receive as a suspended member. This section clarifies what representative roles, if any, a suspended member can perform.

Full suspensions

Members under full suspension should not:

1) **Take part in any formal business of the authority**

A member who is fully suspended may not exercise any of the functions or responsibilities of membership of the authority. Section 83(9) of the Local Government Act 2000 further provides that a suspended member should not participate in any committee or sub-committee of the authority.

2) **Have access to council facilities**

Suspended members should not use or have access to council facilities. As the member is under suspension and

unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority. This is because the member would not be performing council business while suspended.

3) **Receive their council allowance**

Under Regulation 4(3) of the Local Authorities (Members Allowances) Regulations 2003, councils may specify in their member allowance schemes that:

“Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the Local Government Act 2000 or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority.”

It is recommended that members should not receive their allowance while under suspension because they are not performing their role as a member. But, the decision to withhold a member's allowance is ultimately at the discretion of the individual authority.

suspensions

Members under suspension, should:

1) **Make their suspended status clear**

While suspended members remain councillors, they should put 'suspended' after their name when referring to themselves in writing as members. They should also notify constituents of this when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.

2) **Make arrangements for another member to handle their constituency work**

With help from their council officers, suspended members can arrange for other ward members to handle their constituency work. Or, in the case of a single-member ward, suspended members can arrange for neighbouring ward members to take over their constituency work for the duration of the suspension. This ensures that constituents continue to be democratically represented.

What responsibilities remain for suspended members?

The Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority.

However, when amendments to section 52 of the Local Government Act 2000 come into effect, three paragraphs under the Code of Conduct will apply, "at any other time, where that conduct constitutes a criminal offence". As such, these paragraphs will still apply to members who are suspended. These paragraphs will be:

- paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code of Conduct
- paragraph 5 – disrepute
- paragraph 6(a) – improperly conferring or securing an advantage or disadvantage

Partial suspensions

Members can be partially suspended under sections 83(9) and (10) of the Local Government Act 2000. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business.

The terms of a partial suspension must be set by the standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals.

A partial suspension enables the committee to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold

suspensions

the Code of Conduct at a planning committee could be suspended from taking part in planning committee meetings for a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period. Again we recommend that members should not receive allowances relating to areas in which they are suspended from for the duration of their suspension.

Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from their ward or a neighbouring ward, to take over constituency work.

It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension. Once the suspension has ended, the member is free to resume their duties in full as a member of the authority.

appeals

Appeals to the Adjudication Panel for England

A member subject to a standards committee finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding.

The President must receive the member's written application within 21 days of the member receiving notice of the standards committee's decision. In this application, the member (appellant) must outline the reasons for the proposed appeal and apply for any sanction imposed to be suspended, if appropriate. They must also indicate whether they want the appeal carried out in writing or in person.

When deciding whether to grant permission to appeal, the President will consider if there is a reasonable chance of the appeal being successful, either in whole or in part. The President will give the appellant concerned their written decision within 21 days of receiving the application. The President will also give their written decision to:

- the Standards Board for England
- the standards committee of any authority concerned
- any parish or town councils concerned
- the complainant

If the President refuses to give permission, they will explain the reasons for that decision.

Appeal tribunals

If permission is granted, the President of the Adjudication Panel for England will arrange for a tribunal to deal with the appellant's appeal. The tribunal will be made up of at least three members appointed by the President. It may also include the President.

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 concerned within the last five years cannot take part.

If the appellant does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the member notice of the hearing at least 21 days in advance. The appellant can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the appellant wants to have a non-legal representative, the appellant must get permission from the tribunal beforehand. However, the tribunal may prevent that person acting as a representative if they are directly involved in the case.

The appeal tribunal can decide its own procedures. However, it is likely that both the standards committee and the monitoring officer or ethical standards officer will be given the opportunity to make representations in relation to the appeal. Additionally, in appropriate cases,

appeals

they can attend or be represented at the appeal hearing.

If the appellant agrees to have the appeal carried out in writing, the tribunal may still decide to hold a hearing at which the appellant can attend in person and be represented as outlined above. However, the tribunal may choose to carry out the appeal entirely through written representations.

If, after being given reasonable notice, the appellant fails to go to an appeal hearing or be represented at it, the tribunal may determine the matter in the appellant's absence. However, if the tribunal is satisfied that there is a good reason for the appellant's absence, it will postpone the hearing to another date.

Outcome of the appeal

The appeal tribunal will consider whether to uphold or dismiss the finding or part of the finding made by the standards committee.

If the tribunal upholds the standards committee's finding, or part of the finding, it may:

- confirm any sanction imposed by the standards committee
- vary any sanction by substituting any other sanction that was available to the standards committee

If the tribunal dismisses the finding of the standards committee, the decision and any

resulting sanction will no longer apply from the date of the rejection. The standards committee must act on any directions given by the appeal tribunal.

Notice of the appeal tribunal's decision

The appeal tribunal will give written notice of its decision to:

- the appellant
- the Standards Board for England
- the standards committee of any authority concerned
- any parish or town councils concerned
- the complainant

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

Members are responsible for meeting the cost of any representation at a standards committee hearing or appeal tribunal. Local authorities are able to take out insurance to cover this.

However, most insurance schemes will only cover the costs incurred by members who are found not to be in breach of the Code. Therefore members are advised to refer to the terms of their own insurance scheme.

role of the monitoring officer

Monitoring officers need to be aware of the potential conflicts involved in advising the standards committee and advising members.

It is important that standards committees receive high quality, independent advice. For this reason a monitoring officer should be the main adviser to the standards committee, unless they have an interest in the matter that would prevent them from performing this role independently. If this situation arises, a monitoring officer should arrange for another appropriately qualified officer to advise the standards committee.

The monitoring officer or other legal adviser's role in advising the standards committee is to:

- make sure that members of the standards committee understand their powers and procedures
- make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the subject member understands the procedures the standards committee will follow
- provide advice to the standards committee during the hearing and their deliberations
- help the standards committee produce a written decision and a summary of that decision

Monitoring officers play an important role in advising their members on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the standards committee at a later stage.

However, conflicts of interest are not likely to arise simply from informal discussions between members and monitoring officers. Monitoring officers consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise members
- continuing to advise members, while identifying possible scenarios that may lead to future conflicts. They should also ensure that if their advice could be relevant to an investigation, they have another appropriately experienced officer who is prepared to support the standards committee in its hearings and deliberations.

Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the standards committee.

appendix 1

Model documentation for the pre-hearing process

Authorities should use a pre-hearing process to:

- Identify whether the subject member disagrees with any findings of fact in the investigation report.
- Decide whether those disagreements are significant to the hearing.
- Decide whether to hear evidence about those disagreements during the hearing.
- Decide whether there are any parts of the hearings that should be held in private.
- Decide whether any parts of the investigation report or other documents should be withheld from the public, prior to the hearing on the grounds that they contain 'exempt' material.

Below is a checklist for authorities to use before the hearing. At the end of Appendix 1 is model documentation to support it. The documentation is intended to give authorities a consistent approach to help them decide what the relevant issues are before the hearing itself. It is not compulsory.

Pre-hearing process checklist for authorities

The monitoring officer must give a copy of the investigation report to the subject member.

The officer providing administrative support to the committee, in consultation with the chair of the committee, should:

- provide a copy of the standards committee's pre-hearing and hearing procedures to the subject member
- outline the subject member's rights and responsibilities
- propose a date for the hearing
- ask for a written response from the subject member by a set time to find out whether they:
 - i) disagree with any of the findings of fact in the investigation report, including the reasons for disagreement
 - ii) want to be represented at the hearing by a solicitor, barrister or any other person. This should be done while noting that the standards committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined

appendix 1

- iii) want to give evidence to the standards committee, either verbally or in writing
 - iv) want to call relevant witnesses to give evidence to the standards committee
 - v) can attend the hearing on the proposed date
 - vi) want any part of the hearing to be held in private
 - vii) want any part of the investigation report or other relevant documents to be withheld from the public
- send a copy of the subject member's response to the monitoring officer or ethical standards officer and invite the monitoring officer or ethical standards officer to say by a set time whether they want:
 - i) to be represented at the hearing
 - ii) to call relevant witnesses to give evidence to the standards committee
 - iii) any part of the hearing to be held in private
 - iv) any part of the investigation report or other relevant documents to be withheld from the public
- v) to invite any other witnesses the committee feels are appropriate
- The chair of the committee, in consultation with the legal adviser to the committee, should then:
- confirm a date, time and place for the hearing
 - confirm the main facts of the case that are agreed
 - confirm the main facts which are not agreed
 - confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing
 - provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing

appendix 1

Checklist for members

The officer providing administrative support to the committee, in consultation with the chair of the committee, should make sure that the subject member is aware of the following points.

Pre-hearing process

The subject member has the right to:

- go to the hearing and present their case
- call a reasonable number of witnesses to give relevant evidence to the standards committee
- be represented at the hearing by a solicitor, barrister or any other person.
Note – the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined

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

The subject member does not have to go to the hearing or be represented. If the subject member chooses not to go to the hearing, the committee may make a determination in their absence.

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

Hearing process

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

If the standards committee decides that the member has failed to follow the Code and that the member should be sanctioned, it may do any one or a combination of the following:

- Censure the member. This is the only sanction available when dealing with a person who is no longer a member of the authority.
- Restrict the member's access to the resources of the relevant authority for up to six months, which could include limiting their access to the premises of the relevant authority.

appendix 1

- Suspend or partly suspend the member for up to six months.
- Suspend or partly suspend the member for up to six months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the standards committee orders them to. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter set out by the standards committee.

Sanctions may start immediately or up to six months after the hearing, if the standards committee wishes.

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

The member who is the subject of a standards committee finding has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding.

Checklist for the pre-hearing process summary

After the standards committee has received responses from the subject member and the monitoring officer or ethical standards officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

- the name of the authority
- the name of the subject member
- the name of the complainant (unless there are good reasons to keep their identity confidential)
- case reference numbers of the principal authority or the Standards Board for England
- the name of the standards committee member who will chair the hearing
- the name of the monitoring officer
- the name of the ethical standards officer who referred the matter (if applicable)
- the name of the clerk of the hearing or other administrative officer
- the date the pre-hearing process summary was produced
- the date, time and place of the hearing

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- a summary of the complaint
- the relevant section or sections of the Code of Conduct
- the findings of fact in the investigation report that are agreed
- the findings of fact in the investigation report that are not agreed
- whether the subject member or the monitoring officer or ethical standards officer will attend or be represented
- the names of any witnesses who will be asked to give evidence
- an outline of the proposed procedure for the hearing

Pre-hearing process forms

These forms are a guide only and can be found in the **Standards committee determinations toolkit**. Authorities should prepare their own forms as appropriate.

Form A provides an example table to help the subject member identify any disagreements about the findings of fact in the investigation report.

Form B helps the subject member set out any other evidence that is relevant to the complaint made about them.

Form C helps the subject member set out any representations the standards committee should take account of if the subject member is found to have broken the Code of Conduct.

Forms D and E cover details of the hearing and the witnesses who will give evidence.

Also included is **Form F** which is a checklist of details for the pre-hearing process summary.

appendix 2

Model hearing procedures for the standards committee

The model hearing procedures below aim to give standards committees a consistent approach to determining matters locally. These procedures are not compulsory, but authorities should make sure that any procedures they do use are consistent with the principles in this guidance.

Standards committees need to have an efficient and effective hearing process. This will help committees deal with all the issues that need to be resolved in a way that is fair to the member. It will also reduce the prospects of any successful appeal.

The model procedure below is intended to give standards committees a consistent approach to determining matters locally.

The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

Interpretation

- 1) 'Subject member' means the member of the authority who is the subject of the allegation being considered by the standards committee, unless stated otherwise. It also includes the member's nominated representative.
- 2) 'Investigator' means the monitoring officer or ethical standards officer and includes their nominated representative.

- 3) 'Committee' also refers to a sub-committee.

- 4) 'Legal adviser' means the officer responsible for providing legal advice to the standards committee. This may be the monitoring officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

- 5) The subject member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

- 6) The committee may take legal advice, in private if necessary, 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 committee should be shared with the subject member and the investigator if they are present.

Setting the scene

- 7) After all the members and everyone involved have been formally introduced, the chair should explain how the committee is going to run the hearing.

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Preliminary procedural issues

- 8) The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

- 9) After dealing with any preliminary issues, the committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigator's report.

- 10) If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

- 11) If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

- 12) The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.

- 13) At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.

- 14) If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

- 15) If the subject member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence.

After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:

- continue with the hearing, relying on the information in the investigator's report
- allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary

appendix 2

- postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already

- 16) The committee will usually move to another room to consider the representations and evidence in private.
- 17) On their return, the chair will announce the committee's findings of fact.

Did the subject member fail to follow the Code of Conduct?

- 18) The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the Code.
- 19) The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the Code.
- 20) The committee should then consider any verbal or written representations from the investigator.
- 21) The committee may, at any time, question anyone involved on any point they raise on their representations.
- 22) The subject member should be invited to make any final relevant points.
- 23) The committee will then move to another room to consider the representations.

- 24) On their return, the chair will announce the committee's decision as to whether the subject member has failed to follow the Code.

If the subject member has not failed to follow the Code of Conduct

- 25) If the committee decides that the subject member has not failed to follow the Code, the committee can move on to consider whether it should make any recommendations to the authority.

If the subject member has failed to follow the Code of Conduct

- 26) If the committee decides that the subject member has failed to follow the Code, it will consider any verbal or written representations from the investigator and the subject member as to:
- whether the committee should apply a sanction
 - what form any sanction should take
- 27) The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 28) The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

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- 29) On their return, the chair will announce the committee's decision.

Recommendations to the authority

- 30) After considering any verbal or written representations from the investigator, the committee will consider whether it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

appendix 3

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

- 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:
 - to give under any enactment a notice under or by virtue of which requirements are imposed on a person
 - 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) Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

Source: Appendix 3 is an extract from the Local Government Act 1972 (as modified in relation to local determination by standards committee).

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By virtue of paragraph(s) 1, 2, 5, 7c of Part 1 of Schedule 12A of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2, 5, 7c of Part 1 of Schedule 12A of the Local Government Act 1972.

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APPENDIX 4 - INVESTIGATING
OFFICER'S ORIGINAL
ATTACHMENTS -
PUBLIC

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

Part Five, Section A
Members' Code of Conduct

THE GENERAL PRINCIPLES

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by Leadership, and by example, and should act in a way that secures or preserves public confidence.

EXPLANATORY NOTE

Listed above are the general principles, as specified by the Secretary of State, which are to govern the conduct of Members and co-opted members of relevant authorities in England and police authorities in Wales, in accordance with section 49(1) of the Local Government Act 2000. The general principles are expected to govern only the official conduct of Members and co-opted members, apart from the second and eighth, which have effect on all occasions.

Members are required to give the authority a written undertaking that in performing their functions they will observe the Code of Conduct adopted by the London Borough of Haringey as set out below. This is based on the general principles above but contains more detailed mandatory requirements. A person who becomes a Member or co-opted Member of the Council may not act in that office until he/she has given the authority this written undertaking.

The monitoring officer of the authority must establish and maintain a register of interests of the Members and co-opted members of the authority under section 81 of the Local Government Act 2000. Members and co-opted members must register all their financial and other interests as specified in the Code and do so before participating in any business of the authority related to those interests. The register of interests will be available for inspection by the public at all reasonable hours.

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

SCHEDULE
THE MODEL CODE OF CONDUCT

Part 1
General provisions

Introduction and interpretation

1. –(1) This Code applies to you as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code—
 - "meeting" means any meeting of—
 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2. –(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time,

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) 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

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2
Interests

Personal interests

8. –(1) You have a personal interest in any business of your authority where either–

(a) it relates to or is likely to affect–

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body–

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. –(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10. –(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3
Registration of Members' Interests

Registration of members' interests

13. —(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

Written Undertaking

I, , being a member/co-opted member (delete as appropriate) of the London Borough of Haringey Council, undertake to observe the code as to the conduct which is expected of Members/co-opted members (delete as appropriate) of the London Borough of Haringey Council.

Signed.....Date

This undertaking was made and signed before me

Signed.....Date.....

Proper officer of the authority

PART FIVE - CODES AND PROTOCOLS
Section A- Member Code of Conduct

DECLARATION OF ACCEPTANCE OF OFFICE

I [(1)] having been elected to the office of [(2)] of the London Borough of Haringey declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.

I undertake to observe the code as to the conduct that is expected of members of the London Borough of Haringey

Signed

Date

This declaration was made and signed before me,

Signed

Date

Proper officer of the council.

(1) Insert the name of the person making the declaration.

(2) Insert "member" or "Mayor" as appropriate.

THE 2003 CASE REVIEW
STANDARDS BOARD FOR ENGLAND

2003 Case Review

Q&A paragraph 2

Q10 *What does the Code mean by 'treat others with respect'?*

Although the interpretation of unlawful discrimination under paragraph 2(a) of the Code is relatively narrow in scope, this is counter-balanced by the extremely broad terms in which paragraph 2(b) is drafted. Failure to treat others with respect could cover almost any example of unfair, unreasonable or demeaning behaviour directed by one person against another.

Paragraph 2

Bullying is an important example of the type of behaviour that could fall within the scope of paragraph 2(b). The Standards Board for England's view is that bullying of officers and other members is a serious issue. The Standards Board for England and the Ethical Standards Officers are very keen to do everything they can to stamp it out.

Another significant area of concern is the way in which members treat the public. Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration (see case example 2).

Q11 *What kinds of conduct are not covered by 2(b)?*

The apparent breadth of paragraph 2(b) has led to misunderstanding on the part of some members and officers. Paragraph 2(b) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion, and the defence of those opinions, through members' arguments and public debate are an essential part of the cut-and-thrust of politics.

A very clear line has to be drawn between the Code's requirement of respect for others (including members of the authority with opposing views) and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should

Q&A paragraph 2

be able to publicly express disagreement with each other. A rule-of-thumb is expressed in this comparison: 'You're talking drivell' is likely to be an acceptable expression of disagreement; calling someone a 'bloody bitch', on the other hand, is far more likely to constitute a failure to comply with paragraph 2(b). On reflection we can see that the first comment is aimed at the articulation of an idea or argument. The second is aimed at the person and their personal characteristics.

Whilst The Standards Board for England and the Ethical Standards Officers are determined to take a firm line on bullying of officers, this does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in the criticism of the way in which an officer or officers handled particular matters. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time. It is only where members' conduct is unfair, unreasonable or demeaning that paragraph 2(b) will be relevant.

Paragraph 2(b) only applies to activities undertaken in an official capacity. Paragraph 2(b) will not apply to a member's private life. It is not intended to police conversations at the pub or altercations over the garden fence (see case example 3).

Q12 *What sort of behaviour would 'compromise the impartiality of those who work for, or on behalf of, the authority'?*

Paragraph 2(c) is directed at any activity that seeks to put pressure on officers to carry out their duties in a way that is biased or partisan. This may include direct or indirect coercion to favour a particular person, group or organisation, whether commercial, political or voluntary, contrary to officers' obligations to act independently and in the public interest. The Standards Board for England and its Ethical Standards

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Bullying

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Ethical standards officers now also have the power to direct monitoring officers to take action to tackle some member related issues within authorities. Some of these cases may also be more appropriate for investigation and determination by local authorities, which may recommend mediation or other measures to address problems between members and officers.

Proving bullying has occurred

In 2003 the Standards Board for England adopted a lower threshold for referring complaints about bullying for investigation, both in response to concerns from stakeholders about bullying and to demonstrate how seriously we view the issue.

However, it is only possible to investigate such complaints if there is clear evidence that bullying may have occurred. It is helpful if a complainant alleging bullying can provide a detailed record of the incidents. It is also useful if they can provide information on the context in which the incidents occurred. This is because it can be difficult to prove breaches of the Code of Conduct based on general complaints such as "the councillor is always undermining me through her comments", or "the member has repeatedly intimidated and denigrated me", without specific examples that can be objectively assessed.

The test for whether conduct is regarded as bullying is likely to be whether a neutral third party, a 'reasonable member of the public', would regard conduct as bullying if they had all of the relevant facts. The Adjudication Panel has used a similar approach in determining whether or not members have failed to treat others with respect.

Abuse of power

The Shorter Oxford English Dictionary defines bullying as to:

"...persecute, intimidate, oppress (physically or morally) by threats of superior force".

Members are in a position of power and authority, so there is clearly a risk that they could abuse their position to "persecute, intimidate, [or] oppress" others, using "threats of superior force".

Q & A

Paragraph 3

Paragraph 3(2)(b)

(b) You must not bully any person.

Note: this is a new paragraph of the Code of Conduct which reflects the concerns of the Standards Board for England and of its ethical standards officers with the recurring problem of bullying of officers by some members. However, its scope is not just limited to the bullying of officers.

Q20: What is meant by 'bullying' in this section of the Code of Conduct?

The Standards Board defines bullying as offensive, intimidating, malicious, insulting or humiliating behaviour by an individual or group of individuals, based on abuse or misuse of power or authority, which attempts to undermine an individual or a group. It can have an impact on a council's effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave.

Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, or when the behaviour by both the complainant and member contributed equally to the breakdown in relations.

Q21: Who decides whether someone has been bullied?

Ultimately a standards committee, the Adjudication Panel for England or the courts will decide. They are likely to use an objective test. If an officer, member or member of the public thinks that a member has bullied them, the conduct will be looked at through the eyes of a notional reasonable member of the public who looks at the conduct objectively.

Equally, while members may not consider their conduct has constituted bullying, it is likely to be seen as such if a notional reasonable member of the public who looks at the conduct objectively would regard it as bullying.

Q22: Can members criticise officers?

Yes. In some cases, officers have been known to reject reasonable criticism appropriately made and describe it as bullying. The government did not intend the Code of Conduct to constrain members' involvement in local governance, including the role of members to challenge performance. Members are able to question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time.

Q & A

Paragraph 5

For example, councillors using their position to secure a secret personal profit.

- 2) Similarly, situations where a member defies important and well-established rules of the authority for private gain.
- 3) Where a member engages in conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider. For example, they are convicted for sexual offences against children when running a private care home providing services to the council.

Q43: What is "disrepute"?

In general terms, disrepute can be defined as a lack of good reputation or respectability.

In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:

- 1) Reducing the public's confidence in that member being able to fulfil their role; or
- 2) Adversely affecting the reputation of members generally, in being able to fulfil their role.

Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute.

Under the Code, a criminal conviction in appropriate circumstances can have the same effects (see Q9 on page 15).

Q44: What is the significance of the words "could reasonably be regarded"?

An officer carrying out an investigation about someone allegedly breaking the Code of Conduct does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of an authority, in order to show a failure to comply. The test is whether or not a member's conduct "could reasonably be regarded" as having these effects.

This test is objective and does not rely on any one individual's perception. There will often be a range of opinions that a reasonable person could have towards the conduct in question. Members will have failed to comply with the Code if their conduct "could reasonably be regarded" by an objective observer as bringing their office or authority into disrepute.

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Here are two new case examples that relate to paragraph 5 of the Code of Conduct.

Example 1

The Adjudication Panel for England considered case APE 0383 under the 2001 Code. In this case, a councillor was given information in a private briefing to councillors. The briefing was about the council's proposals to buy land and relocate its offices to another town.

The information was made public swiftly after this. The councillor did not agree with the proposals, and secretly bought the land to prevent the council considering it as an option for its future operations. The link to his office was clearly made.

Together with the lack of openness, these actions diminished public confidence in his ability to discharge his office as a councillor. He had therefore conducted himself in a manner which would reasonably be regarded as bringing his office or authority into disrepute. He had also failed to register the exchange of contracts in the land within 28 days. However, the Tribunal decided that he had not improperly sought to secure an advantage or disadvantage. This is discussed further in the cases given under paragraph 6 on page 8.

Example 2

The Adjudication Panel for England decided that a member had brought his office or authority into disrepute in the case APE 0387, under the 2001 Code.

In this case, the member had issued threats to another member immediately before a planning decision was taken. The threats concerned the deselection of the councillor and were coupled with offensive language. These threats were overheard.

The Tribunal did not find these threats improper in the context of political life, and accepted that future careers could be affected by the way a member voted.

However, the Tribunal did find that the comments were disreputable. This was especially so when there was a planning protocol which had been adopted by the council, although not incorporated in the council's code of conduct. The threats and actions of the member constituted a failure to follow that guidance and a breach of that protocol, and so were sufficient to be disreputable.

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By virtue of paragraph(s) 1, 2, 5, 7c of Part 1 of Schedule 12A
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