



Standards Committee

Agenda and Reports

For consideration on

Thursday, 17th June 2010

In Committee Room 1, Town Hall, Chorley

At 2.00 pm



www.chorley.gov.uk

This page is intentionally left blank

10 June 2010

Dear Councillor/Colleague,

STANDARDS COMMITTEE - THURSDAY, 17TH JUNE 2010

You are invited to attend a meeting of the Standards Committee to be held in Committee Room 1, Town Hall, Chorley on Thursday, 17th June 2010 commencing at 2.00 pm.

Please note that the Chief Executive, Donna Hall has been invited to attend the start of the meeting.

AGENDA

1. **Welcome and Introductions**

The Chair will welcome everyone to the meeting, in particular new Committee Members.

2. **Apologies for absence**

3. **Minutes (Pages 1 - 4)**

To confirm as a correct record the enclosed minutes of the meeting of the Standards Committee held on 4 March 2010.

4. **Declarations of Any Interests**

Members are reminded of their responsibility to declare any personal interest in respect of matters contained in this agenda. If the interest arises **only** as result of your membership of another public body or one to which you have been appointed by the Council then you only need to declare it if you intend to speak.

If the personal interest is a prejudicial interest, you must withdraw from the meeting. Normally you should leave the room before the business starts to be discussed. You do, however, have the same right to speak as a member of the public and may remain in the room to enable you to exercise that right and then leave immediately. In either case you must not seek to improperly influence a decision on the matter.

5. **News from Standards for England**

The Monitoring Officer will present a verbal update on any items of interest.

6. **Cases update (Pages 5 - 8)**

To receive the report of the Monitoring Officer outlining recent cases which had been considered nationally, the quarterly return to Standards for England and a verbal update on current local cases, if any (papers enclosed).

7. **Annual Return to Standards for England (Pages 9 - 14)**

To receive, for information, the enclosed Annual Return submitted to Standards for England.

8. **Feedback from visits to Town and Parish Councils**

Members of the Committee will give feedback on their visits to Town and Parish Councils.

9. **Work undertaken to promote the Code of Conduct**

The Monitoring Officer will present a verbal update.

10. **Revised Standards for England Determinations Guidance (Pages 15 - 50)**

To receive and consider the enclosed revised Standards for England Determinations Guidance (updated 11 March 2010)

11. **Training issues**

To discuss training issues for Members of the Committee and Town, Parish and Borough Councillors.

Members will review the training delivered to Committee Members by the Monitoring Officer on the local assessment of complaints and the general role of the Committee on 9 June 2010.

12. **Appointment of Standards Sub-Committee**

To confirm the membership of the Standards Sub-Committee for the ensuing municipal year.

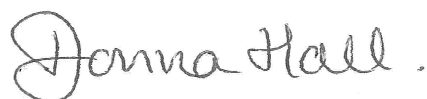
The Sub-Committee will meet on 8 September 2010 and 24 February 2011 to monitor the financial and other interests declarations made by the Borough, Town and Parish Members within Chorley.

13. **Standards Committee work programme (Pages 51 - 52)**

The Committee will consider the enclosed work programme for 2010/11.

14. **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely



Donna Hall
Chief Executive

Dianne Scambler
Democratic and Member Services Officer
E-mail: dianne.scambler@chorley.gov.uk
Tel: (01257) 515034
Fax: (01257) 515150

Distribution

1. Agenda and reports to all Members of the Standards Committee (Tony Ellwood (Chair), Councillor Debra Platt (Vice Chair) and Councillors Judith Boothman, Marie Gray, Laura Lennox, Stella Walsh, Hugh Evans (Independent Member), Gwynne Furlong (Independent Member), Bill Mason (Parish Council representative) and Tony Wilson (Parish Council Representative) for attendance.
2. Agenda and reports to Chris Moister (Head of Governance / Monitoring Officer) and Dianne Scambler (Democratic and Member Services Officer) for attendance.

This information can be made available to you in larger print or on audio tape, or translated into your own language. Please telephone 01257 515118 to access this service.

આ માહિતીનો અનુવાદ આપની પોતાની ભાષામાં કરી શકાય છે. આ સેવા સરળતાથી મેળવવા માટે કૃપા કરી, આ નંબર પર ફોન કરો: 01257 515822

ان معلومات کا ترجمہ آپکی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون

01257 515823

کیجئے:

This page is intentionally left blank

Standards Committee

Thursday, 4 March 2010

Present: Tony Ellwood (Independent Chair), Councillor Mike Devaney (Vice-Chair) and Councillors Judith Boothman, Debra Platt, Stella Walsh, Hugh Evans (Independent Member), Joan Geddes (Parish Council representative), Bill Mason (Parish Council representative) and Alan Platt (Parish Council representative)

Officers in attendance: Chris Moister (Head of Governance / Monitoring Officer) and Ruth Rimmington (Democratic and Member Services Officer)

10.S.119 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillor Cath Hoyle and Gwynne Furlong (Independent Member).

10.S.120 MINUTES

RESOLVED – That the minutes of the meeting of the Standards Committee held on 10 December 2009 be confirmed as a correct record and signed by the Chair.

The Chair introduced Chris Moister, the Council's newly appointed Head of Governance and Monitoring Officer.

On behalf of the Committee the Chair expressed thanks to Andrew Docherty, for his work, guidance and expertise as Monitoring Officer and wished him well in his new role as Monitoring Officer at City of York.

10.S.121 DECLARATIONS OF ANY INTERESTS

No interests were declared by Committee Members in respect of items on the agenda.

10.S.122 NEWS FROM STANDARDS FOR ENGLAND

The Monitoring Officer reported that parliamentary approval of the new Code of Conduct for Members had been delayed until after the general election. Training for the Committee and Borough, Town and Parish Councillors would be arranged following the adoption of the Code.

RESOLVED – The update be noted.

10.S.123 CASES UPDATE

The Committee received the report of the Monitoring Officer outlining recent cases which had been considered nationally by the First-tier Tribunal (Local Government Standards in England). Members discussed the cases and clarified several points.

The Monitoring Officer advised there was only one case ongoing locally which was being dealt with by the First-tier Tribunal.

RESOLVED

- 1. The report be noted.**
- 2. The quarterly return to Standards for England for July to September and October to December be noted.**
- 3. The verbal update on current local cases be noted.**

10.S.124 FEEDBACK FROM VISITS TO PARISH COUNCILS

Members of the Committee reported that the visits undertaken so far had been positive. The interests flow charts, in particular, had been well received.

The Chair thanked Committee Members for their contribution to the mentoring scheme.

RESOLVED

1. **The update be noted.**
2. **Officers to confirm that all Town and Parish Council's have been visited this year.**

10.S.125 WORK UNDERTAKEN TO PROMOTE THE CODE OF CONDUCT

Officers presented an update on the work undertaken to promote the Code of Conduct this quarter.

- Training had been held on the Code of Conduct, with both Borough, Town and Parish Council Members in attendance.
- All Town and Parish Council clerks had confirmed the membership of their respective Councils, received copies of the recruitment information for the third member of the Standards Committee and the interests flow chart.
- The Standards for England Annual Review and latest "Bulletin" had been forwarded to all Committee Members, Town and Parish Council clerks and featured on "intheknow" for Borough Councillors.
- An article reminding Members to update their financial and other interests form had featured on "intheknow".
- The Standards for England quarterly return had been completed.

RESOLVED – The update be noted.

10.S.126 TRAINING ISSUES

Training had been delivered to Borough, Town and Parish Councillors in December, rather than July, in anticipation of the revised Code of Conduct. The revised Code was expected after the general election. A focus on acceptable and unacceptable behaviour were suggested as topics for the next training session.

Committee Members discussed their own training requirements. The Monitoring Officer had delivered a half day session in July 2009 on the local assessment of complaints. The Committee discussed the addition of information regarding the general role of the Committee to a similar session to be held in June 2010.

RESOLVED

1. **The update be noted,**
2. **Training on the revised Code of Conduct be delivered to Borough, Town and Parish Councillors following it's adoption, with alternative venues to be considered, for example a community centre, to encourage Town and Parish Councillors to attend.**
3. **Training to be delivered on the local assessment of complaints and the general role of the Committee on Wednesday, 9 June 2010 at 10am until 12 noon in Committee Room 1.**

10.S.127 LOCAL ASSESSMENT PROCESS AND TIMESCALES

At previous meetings Members had discussed the need for clarity and greater understanding of the process and timescales involved with local assessment of

complaints. The Committee received the report of the Director of Transformation which formalised and clarified the process including the use of two flow diagrams.

Members considered the proposals for performance promises and noted that for assessment decisions Standards for England recommend to “complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint” and “suggest that the Standards Committee sends out its decision notice within five working days of the decision being made”.

For review decisions Standards for England recommend “adopt(ion of) a policy of undertaking the review within the same timescale as the initial assessment decision is taken, aiming to complete the review within an average of 20 working days” and “recommend that the review sub-committee sends out its decision notice within five working days of the decision being made”.

RESOLVED

- 1. The two flow diagrams be adopted and published on the Council’s website,**
- 2. Performance promises be adopted at various stages of the process as follows:**
 - a. To complete the initial assessment of an allegation within an average of 15 working days and send out notification to all parties within an average of 2 working days,**
 - b. To complete the review of an allegation within an average of 15 working days and send out notification to all parties within an average of 2 working days.**

10.S.128 REVIEW OF THE COMPLAINT FORM

At the last meeting the Committee requested that the complaint form be reviewed to make it more user friendly. Members’ comments were requested on the suggested amendments.

The Monitoring Officer highlighted the Committee were obliged to consider any allegations received in writing.

RESOLVED - The revised form be adopted with the addition of the two flow charts adopted at the previous item.

10.S.129 CONSIDERATION OF THE COUNCIL'S OFFICER CODE OF CONDUCT

The Committee considered the Council’s officer code of conduct. The Monitoring Officer explained that the code was not based on a national model.

The code had been developed by Human Resources and considered by Strategy Group and Staff Matters, (a staff forum set up to encourage staff to give their views and comments on Council policies and processes and to have an active involvement in the decision making process).

RESOLVED

- 1. The Council’s officer code of conduct be noted.**
- 2. The suggestion be made that it might be appropriate for staff to observe the same threshold for gifts and hospitality of £25.**

10.S.130 DRAFT ANNUAL REPORT

The Monitoring Officer presented the draft Annual Report for the Standards Committee.

Members queried several points and noted that a summary of complaints received, the recruitment of Independent Members and items of best practice had been included.

The report would be presented to Council, posted on the internet and forwarded to all Town and Parish clerks in the Borough.

RESOLVED

- 1. The Annual Report be presented to Council in April.**
- 2. The report be added to the information pack given to new Members of the Committee.**
- 3. The report be considered by Overview and Scrutiny Committee in the new Municipal Year to raise awareness of the work of the Standards Committee.**

10.S.131 STANDARDS COMMITTEE WORK PROGRAMME

The Committee considered the Work Programme. It was suggested that consideration be given to the ethical framework set out by the Council for dealing with partners, both contractual and relating to the Local Strategic Partnership.

It was noted that Mr Ellwood would be invited to new Member induction as Chair of the Committee and that the Chief Executive would be attending the start of the first Standards Committee meeting in the new municipal year.

RESOLVED – The Work Programme be noted.

10.S.132 APPOINTMENT OF PARISH COUNCIL REPRESENTATIVE

This item was accepted by the Chair as urgent to enable the report to be considered at this meeting and by Council on 13 April.

This was the last meeting for Joan Geddes due to her retirement from Heapey Parish Council and on behalf of the Committee the Chair thanked Joan for her active membership and strong support for the work of the Committee. The Committee wished Joan and her family best wishes for the future.

Due to Joan's retirement there was a need to appoint a third Town and Parish Council representative. The appointment of Town and Parish representative to the Standards Committee had to be made in consultation with the Town and Parish Councils. Accordingly, they were invited to submit nominations. Nominated Town and Parish Councillors were invited to submit a written application setting out how they considered they met the criteria.

An appointment panel had been established from within the membership of the Committee to interview. Following a recommendation from this Committee a report would go to Council on 13 April to confirm the appointment.

RESOLVED – The Committee recommend to Council that Town Councillor Anthony Wilson be appointed as a Town and Parish Council representative on the Standards Committee to serve the same term of office on the Standards Committee as his term of office on Adlington Town Council.

Chair

Report of	Meeting	Date
The Monitoring Officer	Standards Committee	17 June 2010

CASE UPDATE

PURPOSE OF REPORT

- To advise members of Cases considered nationally since the last meeting.

RECOMMENDATION(S)

- That the content of the Report be noted.

DETAILS OF CASES

- There have been 8 Adjudication Panel decisions reported since the last meeting of the Standards Committee. Members are invited to review these decisions on the Adjudication Panels website. The link to this site is www.adjudicationpanel.tribunals.gov.uk.
- The following cases are however of interest

4.1 APE 0459 – Rod Frazer: Astley Village Parish Council

I wouldn't propose to revisit the factual history to this matter which has been before this committee before. It is of interest however as it relates to a matter which this standards committee has considered.

The Tribunal upheld the decision to suspend Cllr Frazer for a period of 4 months for the following reasons

- Persistent and unsubstantiated defamatory statements
- Posting defamatory and unsubstantiated comments on a website
- Harassment of the Parish Council Clerk.

4.2 APE 0483 – Cllr Colin Willets: London Borough of Bromley

This decision is of interest as it demonstrates the Tribunals approach to unacceptable behaviour by a member towards officers. It provides a considered approach to individual complaints, balancing the rights of the member to be politically active against their obligations under the code. It also provides guidance on the sliding approach the Tribunal have to such behaviours depending on the seniority of the officer. Finally the Tribunal also demonstrate how the individual instances should be considered as a pattern of behaviour.

The Cllr, was clearly active in his role within the community and much of his activity was directed towards the cleanliness of the streets and the streetscene within his ward. The Tribunal did not criticise this. What was at issues were the methods used by the Cllr. He had twice been asked (by 2 different Chief Executives) to use a single

point of contact for reporting issues to neighbourhoods officers and had largely overlooked these requests, continuing to approach junior officers directly. He had used aggressive and belittling language to Directors and had accused at Council meetings the Chief Executive of being a liar and a cheat. This, couple with emailed and postal communications which had been shared with other including residents of the Borough was found to be a pattern of bullying and abusive behaviour. Whilst the Tribunal acknowledged that the Chief Executive should have a thicker skin than junior officers, what had been stated by the Cllr was over the line.

The Tribunal imposed a sanction of 12 months suspension for what it felt was a very serious infraction of the code of conduct. Members of the Committee are encouraged to read this decision.

4.3 APE 0493 – Cllr Peter Farrell; Doncaster MBC

This is a decision of particular relevance to this Council as it relates to the breach of an email usage policy. Members of this Committee may be aware that such a policy is soon to be introduced within this Authority.

The Cllr received a total of 4 jokes into his Council email account. All were discriminatory being either sexist or racist. It should also be noted that the Cllr accessed this email account using a council supplied laptop. The Cllr then forwarded the emails to multiple recipients with no covering explanation. The Cllr accepted what he had done and also acknowledged having signed the email usage policy which precluded such a use.

What is unfortunate about this decision is the matter on which it doesn't make any finding or decision. The Tribunal supported the Ethical Standards Officers (ESO) finding that the Cllr was acting in accordance with his role as a Cllr. However, the ESO does state that the Cllr made no attempt to distinguish these emails from his role as a Cllr by marking them personal or private. The decision does not address the situation where a Cllr sends a discriminatory or offensive email from his council email account but marks it as Personal and does not sign it off as "Cllr.....". As usual it will depend on the circumstances but I would suspect that the Cllr concerned would have to work very hard to provide the necessary distance between his personal usage and the council account. It may also be that this use would still be a breach of the Usage Policy with its own sanctions even if personal use were allowed.

Although it was found that 2 of the emails were at the lower end of the scale, the Cllr was suspended for a period of 3 months. It should also be noted that the Tribunal had mitigated this punishment to reflect that the Cllr had stood down from the position of civic mayor which he was to hold for the following municipal year.

- 5. As ever, whilst the findings of the Tribunals do not bind the Standards Committee the analysis and reasoning used is persuasive and will off the Committee assistance in considering complaints

**Chris Moister
Monitoring Officer**

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Chris Moister	5160	3 June 2010	***



Print summary

Authority Details

Quarter	January 1st - March 31st
Report year (yyyy e.g. 2008)	2010
Nil return	no
Authority type	District Council
Authority return status	Final
How many members are on the standards committee, excluding vacancies and substitutes?	11
Does this authority have parish or town councils?	yes
How many parish or town councils are in this authority?	22
Number of parish representatives	3
Number of independent members	3
Authority has independent chair?	yes
Is this authority part of a joint arrangement?	no

Cases

Case reference no.	Case status	Received - (dd/mm/yyyy)
00261	Open	04/03/2010
CC180809	Closed	07/09/2009
AVPC030609	Closed	10/06/2009
CC130509	Closed	01/06/2009
AVPC220409	Closed	11/05/2009

AVPC040209	Closed	31/03/2009
AVPC220209	Closed	22/02/2009
CC14102008a	Closed	22/10/2008
CC14102008b	Closed	22/10/2008

[Print this page](#)

Annual Return 2010

Authority name
 Chorley Borough Council
 Annual Return 2010 - form v1.18

PART 1: COMMUNICATION

The main roles of a standards committee are:

- to promote and maintain high standards of conduct by members
- to assist members in observing the Code of Conduct.

Your responses to this section will help us to collect examples of the different ways that standards committees communicate messages about ethical standards, both within the authority and to the wider public.

Annual Report

Does the standards committee produce an annual report?

Yes

What does the report contain?

A personal statement by the standards committee chairman, Information about the members of the standards committee, The role of the standards committee, The standards committee terms of reference, Information about the Code of Conduct, Statistical information about complaints that have been received, Information about the length of time taken dealing with complaints, A summary of complaints which have led to investigation, sanction or other action, Details about training/events provided, The forward work plan of the standards committee, Other

Please describe what "Other" contents are in the report.

parish mentoring scheme
 recruitment of parish members
 best practice
 work of sub-committees

How is the standards committee annual report circulated?

Sent to all senior officers, Sent to all members, 3c, Available on the authority intranet, Available as a specific item on the authority website, Included as a full authority meeting agenda item, Available at authority offices

The report is "Available as a specific item on the authority website", please provide the web address.

[http://democracy.chorley.gov.uk/Published/C00000114/M00002109/AI00018114/\\$AnnualReport.docA.pdf](http://democracy.chorley.gov.uk/Published/C00000114/M00002109/AI00018114/$AnnualReport.docA.pdf)

Publicising Complaints

How can the public access information about how to make a complaint against a member?

Through a 'compliments and complaints' type section of the council website, Through the standards committee section of the website, Complaints leaflets available from the authority, Advertised through parish councils

The information is on the "'compliments and complaints' type section of the council website", please provide the web address.

<http://www.chorley.gov.uk/index.aspx?articleid=406>

The information is on "standards committee section of the website", please provide the web address.

<http://democracy.chorley.gov.uk/mgCommitteeDetails.aspx?ID=124>

How can the public access information about the outcome of initial assessment decisions?
 Written summary available for public inspection

-
-
-
-
-
-

How can the public access information about the outcome of investigations?
 Hearings are open to the public, Publicised in the local press only if the subject member agrees,
 Published on the authority website, Decision notices are available for public inspection

-
-
-
-
-
-
-

Do you have a mechanism in place for measuring the satisfaction of all those involved in allegations of misconduct? For example the member, complainant and witnesses.

No

Communicating the role and work of the standards committee and standards generally

What does the authority do to promote the work of the standards committee and standards generally to the rest of the authority (i.e. internally)?

Dedicated standards committee pages on intranet , Standards committee independent members observe other authority meetings, Other

-
-
-
-
-
-
-

Please describe the "Other" methods used.

Member Addressed Email Newsletter "In the Know" contains standards reminders eg registration of interest forms / gifts and hospitality.

How can the public access information about your standards committee?

Dedicated standards committee section on the authority website, Within 'council and democracy' type section of website, Standards committee minutes, agendas, and reports are available to the public, Leaflets and/or posters are placed in public buildings, Places articles in the authority newsletter / bulletin / other publication

-
-
-
-
-
-
-
-
-

Please provide the web address for the standards committee section on the authority website.
<http://democracy.chorley.gov.uk/mgCommitteeDetails.aspx?ID=124>

Please provide the web address for information within the council and democracy section of your website.
<http://www.chorley.gov.uk/index.aspx?articleid=3023>

What else does the authority do to promote the work of the standards committee and standards generally to the public and other partners?

Local Strategic Partnership (the Chorley Partnership) Constitution includes the 10 general principles of public life.

Chorley Council's Framework for Partnership Working includes direct reference to standards of personal behaviour and the code of conduct with a requirement that all parties within the partnership observe the tenets of the code.

PART 2: INFLUENCE

A key factor in creating a strong ethical framework in authorities is clear ethical leadership from leaders and chief executives, setting the tone for the rest of the organisation.

Your responses to this section will help us to understand how closely your standards committee works with political and officer leadership in the authority, and the ways in which the leadership encourages strong ethical standards.

How does the standards committee communicate ethical issues to the senior figures within your authority (for example the Chief Executive and Leader of the Authority, Party Leaders)?
 Informal discussion on particular standards issues, Monitoring Officer is a member of or attends Corporate Management Team (or equivalent) meetings

How do the senior figures in your authority demonstrate strong ethical values?
 Through a strongly promoted whistle-blowing policy, Demonstrating appropriate behaviours

Does your authority have a protocol for partnership working that outlines the standards of behaviour expected of all those working in partnership?

Yes

What mechanisms does the authority use for dealing with member/officer and/or member/member disputes?

Informal discussion/mediation, Monitoring Officer mediation, Senior figure mediation (e.g. Chief Executive), Advice from Human Resources department, Solicitor / legal adviser consulted

PART 3: TRAINING AND SUPPORT

A specific function of a standards committee is to train members on The Code of Conduct, or arrange for such training. A standards committee can also arrange training on the local standards framework. Your responses to this section will help us to form a view about what the most common topics and methods of training are so that we can share them with the rest of the standards community.

Between 1 April 2009 and 31 March 2010, has the authority assessed the training and development needs of authority members in relation to their responsibilities on standards of conduct?

No

If no, please give your reasons why?

Such assessments by way of PDP's are done bi-annually. Last completed in 2008-9

Annual training on the Code of Conduct is provided and all members are invited to attend. Although their individual needs are not specifically assessed.

What training/support was provided during the period 1 April 2009 to 31 March 2010?

Introduction to the Code of Conduct, Elements of the Code of Conduct, Role and responsibilities of the standards committee, Ethical governance/behaviour

Who received training/support?

Standards committee chair, Independent members, Other standards committee members, All authority members, Specific authority members with particular needs (e.g. new members, planning committee members), Other

Which "Other" people received training?

Parish members and clerks

What methods were employed to give training/support?

Internal training (presentations/seminars/workshops), Joint/regional training event, Guidance notes/briefing materials, Standards for England materials

In which areas of the Code of Conduct has training/support been provided?

Respect, Personal/Prejudicial Interests, Use of resources, Bullying, Disrepute, Predisposition, Pre-determination and bias, Equality, Confidentiality

What other training/support has been provided on areas of an authority member's role or activities they may engage in?

Chairing skills , Predetermination, Predisposition and bias

In general, how well attended was the training provided?

25-50%

Please give a brief overview of how standards issues are covered in your induction process for new members of the authority?

Presentation by Monitoring Officer on Code of Conduct and general discussion. Completion of Register of interest form.

In which areas of the role and responsibilities of the standards committee has training/support been provided for standards committee members? Please tick all that apply.

Initial assessments, Other action/mediation, Reviews, Investigations, Hearings, Sanctions, Other

Describe what "Other" areas were covered.

Parish Mentoring

PART 4: INVESTIGATIONS

Have any investigations been completed during the period 1 April 2009 - 31 March 2010?

Yes

How many investigations have been completed during this period?

2

Have any of the investigations used external investigators?

Yes

NOTE: This includes employees of other authorities.

Of the investigations completed during the period, for how many have external investigators been used?

1

Overall, what was your principle reason for out-sourcing the investigation(s)?

Impartiality

What type of external investigator(s) did you use?

Self-employed investigator

For the period 1 April 2009 to 31 March 2010, what was the approximate total cost of fees paid to the external investigator(s) for completed cases?

£ 3538.00

Please provide a brief overview of the processes you have in place to ensure the quality of local investigations.

Investigating Officer is restricted to Legal or other Senior Officer with experience of the Code of Conduct.

The Standards for England guidance is followed .

Interviews are tape recorded or noted in manuscript contemporaneously.

Reports follow Standards for England template.

PART 5: RELATIONSHIPS WITH PARISH AND TOWN COUNCILS

We recognise the value of the vital role parish councillors play in representing their communities. Your responses to this section will help us to build a clearer picture of the level of support and communication between principle and parish/town councils.

Has your authority provided training for parish councillors during the period 1 April 2009 to 31 March 2010?

Yes

If yes, what topics did the training cover?

The Code of Conduct generally, Personal and prejudicial interests

What methods were employed to give training/support?

Internal training (presentations/seminars/workshops), Guidance notes/briefing materials, Standards for England's materials

In general, how well attended was the training for parish councillors?
0-25%

Has your authority provided training for parish clerks during the period 1 April 2009 – 31 March 2010?

Yes

What topics did the training for parish clerks cover?

The Code of Conduct generally, Personal and prejudicial interests

What methods were employed to give training/support to parish clerks?

Internal training (presentations/seminars/workshops), Guidance notes/briefing materials, Standards for England's materials

In general, how well attended was the training for parish clerks?
0-25%

Does your council have a COMPACT (a formal agreement with your county Association of Local Councils about supporting standards for parish and town councils in the area)?

No

Describe the relationship between your authority and your County Association of Local Councils in relation to standards. For example, how regularly do you interact with them? Are you involved in delivering joint training?

Provide venue for meetings but no substantial involvement.

Standards for England and Teesside University are currently researching the role of the Parish Liaison Officer. Teesside University have created a brief questionnaire to assess the organisational background, functions and skills needed to carry out the Parish Liaison role. Does your authority have a Parish Liaison Officer?

No

What steps have you taken when dealing with parishes which have had problems with standards issues? For example, what preventative or capacity building work have you done with parishes?
None - no real parish issues.

Which of the following areas would you like Standards for England to produce additional guidance on to support your work with parishes?

Planning and interests, Dual-hatted members

This page is intentionally left blank

STANDARDS COMMITTEE DETERMINATIONS

contents

introduction	3
Regulations	4
Background	4
consideration meetings	5
hearings	6
Timing of the standards committee hearing	6
Scheduling a hearing	7
The pre-hearing process	7
Key points for the pre-hearing process	7
Pre-hearing process summary	9
The hearing	9
Representatives	10
Evidence	10
Witnesses	10
Sanctions	11
Considering the sanction	12
findings	15
Notice of the standards committee’s findings	15
Making the findings public	15
Written decision format	16
suspensions	17
Full suspensions	17
What responsibilities remain for suspended members?	18
Partial suspensions	18

contents

appeals	20
Appeals to the First-tier Tribunal (Local Government Standards in England)	20
Appeal tribunals	20
Outcome of the appeal	21
Notice of the appeal tribunal's decision	21
costs	22
role of the monitoring officer	23
appendix 1	24
Model documentation for the pre-hearing process	24
Pre-hearing process checklist for authorities	24
Checklist for members	26
Pre-hearing process forms	28
appendix 2	29
Model hearing procedures for the standards committee	29
The written decision	32
appendix 3	33
Categories of exempt information	33

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.

introduction

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

consideration meetings

should be appointed to receive and consider such reports.

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 First-tier Tribunal 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 First-tier Tribunal 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**.

hearings

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.

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.

hearings

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.

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)

hearings

- 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
- 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?

hearings

- 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?
- 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 First-tier Tribunal 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.

hearings

- A member’s previous record of good service.
- Substantiated evidence that the member’s actions have been affected by ill-health.
- 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 First-tier Tribunal 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 First-tier Tribunal 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

Appeal to the First-tier Tribunal

Where a standards committee decides that a member has failed to comply with the Code of Conduct, the member may within 28 days of being notified of that decision, seek permission to appeal to the First Tier Tribunal and if appropriate, apply to the First-tier Tribunal for the suspension of any sanction imposed until such time as any appeal is determined.

In deciding whether to give permission to appeal, the First-tier Tribunal will consider whether, in its opinion, there is a reasonable prospect of the appeal being successful (either in whole or in part).

Permission to appeal or to suspend a sanction may be given in relation to the whole or any specified part of the finding or sanction.

References to the First-tier Tribunal for action in respect of misconduct

An Ethical Standards Officer may refer the matters which are subject to the investigation to the First-tier Tribunal for adjudication.

A standards committee may refer a case to the First-Tier Tribunal for determination where it considers that the action it could take against a member is insufficient and the First-tier Tribunal agrees to accept the referral.

Appeals to the Upper Tribunal

Member appeal - Where the First-tier Tribunal decides that a member has failed to comply with the Code of Conduct, the member may, within 28 days of being notified of that decision seek permission to appeal against that decision to the Upper Tribunal (Administrative Appeals Chamber). The member must first apply to the First-tier Tribunal for permission to appeal.

Appeal by Others- Either party can seek to appeal the decision of the First-tier Tribunal to the Upper Tribunal (Administrative Appeals Chamber) if they can show there was an error of law made in that decision. The party wishing to appeal must first apply to the First-tier Tribunal for permission to appeal. This must be made in writing within 28 days after the First-tier Tribunal has sent written reasons for its decision.

On receiving an application for permission to appeal the First-tier Tribunal may decide to review its decision, if it is satisfied there was an error of law. If the First-tier Tribunal decides not to review its decision, it will then consider whether to give permission to appeal the decision to the Upper Tribunal.

appeals

If the First-tier Tribunal refuses permission to appeal to the Upper Tribunal the party has a right to make an application directly to the Upper Tribunal for permission to appeal no later than a month after receiving that refusal decision.

Additionally, where the First-tier Tribunal decides that a member has failed to comply with the Code of Conduct, the member may also within 28 days of being notified of that decision seek permission to appeal against the finding of failure to comply with a code of conduct or the imposition of any sanction. Again the member must first apply to the First-tier Tribunal for permission to appeal.

costs

Members are responsible for meeting the cost of any representation at a standards committee hearing or 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.

The First-tier Tribunal has the power to make an order for costs if the Tribunal considers that a **party** has acted unreasonably in bringing, defending or conducting the proceedings. It may make an order for costs following an application or on its own initiative.

The First-tier Tribunal may also order any **legal or other representative** to meet any wasted costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of that legal or other representative in bringing, defending or conducting proceedings.

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
- 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
- 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
 - 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 First-tier Tribunal 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

appendix 1

- 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.

appendix 2

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.

appendix 2

- 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).

notes

This page is intentionally left blank

Standards Committee Work Programme

Thursday, 17 June 2010

Revised Standards for England Determinations Guidance
Appointment of Standards Sub-Committee
Annual Return to Standards for England

Thursday, 16 September 2010

Thursday, 9 December 2010

Thursday, 3 March 2011

Other topics

Standing items: News from Standards for England, Cases Update, Feedback from visits to Parish Councils, Work undertaken to promote the Code of Conduct, Training issues, Standards Committee work programme
Process for dispensations
Guidance on information accessible, disclosed and disposed of by Members
Consideration of the Officer code of conduct
Consideration of the current Local Code of Conduct on Planning issues following the review by ACSES
Consideration of the need for a Licensing Code of Conduct

This page is intentionally left blank