



**Committee:** STANDARDS COMMITTEE

**Date:** THURSDAY, 19 JUNE 2008

**Venue:** LANCASTER TOWN HALL

**Time:** 10.00 A.M.

**A G E N D A**

1. **Apologies for Absence**

2. **Minutes**

Minutes of meeting held on 23<sup>rd</sup> May 2008 (previously circulated).

3. **Items of Urgent Business authorised by the Chairman**

4. **Declarations of Interest**

5. **Code of Conduct Investigation, Pre-Hearing and Hearing Procedures (Pages 1 - 17)**

Report of the Monitoring Officer

6. **Protocol on Publicity for Complaints of Breach of Code of Conduct made to the Standards Committee (Pages 18 - 22)**

Report of the Monitoring Officer

7. **Procedure for Considering Allegations of Breach of the Council's Protocols (Pages 23 - 25)**

Report of the Monitoring Officer

## **ADMINISTRATIVE ARRANGEMENTS**

### **(i) Membership**

#### Councillors

Councillors Jon Barry, Roger Dennison, Sheila Denwood, Sarah Fishwick, Janie Kirkman, Roger Sherlock and Joyce Taylor

#### Voting Co-optees

Stephen Lamley (Chairman)  
Margaret Davy, Paul Gardner, Tony James, David Jordison, Sue McIntyre, Susan O'Brien and Frank Senior

### **(ii) Substitute Membership**

#### Councillors

Councillors Keith Budden, John Gilbert, Roger Plumb, Ron Sands and Jude Towers

### **(iii) Queries regarding this Agenda**

Please contact Suzanne Smith, Democratic Services - telephone (01524) 582074 or email [smsmith@lancaster.gov.uk](mailto:smsmith@lancaster.gov.uk)

### **(iv) Changes to Membership, substitutions or apologies**

Please contact Members' Secretary, telephone 582170, or alternatively email [memberservices@lancaster.gov.uk](mailto:memberservices@lancaster.gov.uk).

MARK CULLINAN,  
CHIEF EXECUTIVE,  
TOWN HALL,  
DALTON SQUARE,  
LANCASTER LA1 1PJ

Published on Friday 6<sup>th</sup> June 2008

**STANDARDS COMMITTEE****CODE OF CONDUCT INVESTIGATION, PRE-HEARING AND  
HEARING PROCEDURES****19th June 2008****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to consider investigation, pre-hearing and hearing procedures to apply where the Assessment Sub-Committee has referred a complaint of alleged breach of the Code of Conduct for investigation.

**This report is public**

**RECOMMENDATIONS**

- (1) **That the Committee approve the draft Investigation, Pre-hearing and Hearing Procedures appended to the report, and in so doing determine in particular the arrangements for consideration by the Standards Committee of reports referred by the Monitoring Officer following investigation locally or by an Ethical Standards Officer.**

**1.0 Introduction**

- 1.1 The Standards Committee has previously approved pre-hearing and hearing procedures based on guidance issued by the Standards Board. However, these procedures required updating in the light of the Standards Committee (England) (Regulations) 2008, and the Monitoring Officer has therefore prepared new investigation, pre-hearing and hearing procedures, based on the Committee's existing practice, but updated to comply with the new Regulations.

**2.0 Proposal Details**

- 2.1 The new draft procedures are appended to the report for consideration by the Committee.
- 2.2 There is, however, one particular issue on which the Committee's views are sought, and where options have been included in the draft Investigation and Pre-hearing procedures.
- 2.3 Regulation 17 of the 2008 Regulations provides that where a Monitoring Officer refers a report to the Standards Committee under Regulation 14 or 15 (that is,

following investigation locally or by an Ethical Standards Officer), the Standards Committee shall convene to consider the report and make one of the following findings:

- That it accepts the Monitoring Officer's finding of no failure to comply with the Code,
- That the matter should be considered at a hearing of the Standards Committee, or
- That the matter should be referred to the Adjudication Panel for determination.

2.4 Regulation 6 provides that the Standards Committee may appoint sub-committees to deal with its functions under Regulation 17, and it is therefore necessary to consider whether the decision to accept the Monitoring Officer's finding, or to hold a hearing, or to refer the matter to the Adjudication Panel should be taken by the full Committee or by a Sub-Committee.

2.5 In order to avoid any possible future conflict of interest, it would seem preferable for this role to be undertaken by a Sub-Committee rather than the full Committee. A number of authorities, including Birmingham City Council, Carlisle City Council and South Lakeland District Council have indicated that they will be re-convening the Assessment Sub-Committee that originally referred the complaint, and asking it to consider the Monitoring Officer's report in accordance with Regulation 17. This would appear to be a sensible approach, as the establishment of a different sub-committee to fulfil this role would run the risk that further members might be conflicted out of participating in the Hearing Sub-Committee. However, it would be important to note that in fulfilling this role, the Assessment Sub-Committee would be subject to ordinary access to information rules, and it might be appropriate to refer to it as the Assessment (Regulation 17) Sub-Committee when it is undertaking this function, to distinguish from its preliminary assessment function.

2.6 Other options would be for the full Committee to make the decision, or for it to establish a different Sub-Committee to make the decision, but the Monitoring Officer would recommend using the Assessment Sub-Committee.

2.7 With regard to the Hearings Sub-Committee, the proposals were discussed in principle at the Committee's last meeting, and the draft procedures assume a sub-committee of five, which was the preference expressed by Members.

### **3.0 Consultation**

3.1 The Monitoring Officer has sought the views of other Monitoring Officers in Lancashire and Cumbria, and through the Association of Council Secretaries and Solicitors, to ensure that this Council's practice is consistent with that of other authorities.

### **4.0 Options**

4.1 It is necessary for the Committee to have in place investigation, pre-hearing and hearing procedures. The options open to the Committee are to approve the draft procedures appended to this report, with or without further amendments. The options for dealing with Regulation 17 are set out in the main body of the report.

### **5.0 Conclusion**

5.1 The Committee's views are sought.

**CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None arising from this report.

**FINANCIAL IMPLICATIONS**

There are no financial implications as a result of this report.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments to add.

**LEGAL IMPLICATIONS**

Legal Services have been consulted and have no further comments.

**MONITORING OFFICER'S COMMENTS**

The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.

**BACKGROUND PAPERS**

None

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**Ref:** ST

**LANCASTER CITY COUNCIL STANDARDS COMMITTEE**

**PROCEDURE FOR CASES REFERRED FOR INVESTIGATION BY THE MONITORING OFFICER**

1. When an allegation is referred to the Monitoring Officer by the Assessment Sub-Committee or by an Ethical Standards Officer (ESO) for investigation, the Monitoring Officer will within five working days, unless otherwise directed by the Assessment Sub-Committee of the Standards Committee or the ESO, inform the member who is the subject of the allegation of failure to comply with the code of conduct, ("the Subject Member"), the person who made the allegation ("the Complainant"), the clerk to any parish council concerned, and the standards committee of any other authority concerned, that the matter has been referred for investigation.
2. Unless the Assessment Sub-Committee or ESO have directed that it would be contrary to the public interest or prejudicial to the investigation, the Monitoring Officer will at the same time provide the Subject Member with a written summary of the allegation.
3. The Monitoring Officer will appoint an Investigating Officer who may be an officer of the Council, or an external investigating officer. The Investigating Officer may appoint persons to assist him/her in the conduct of the investigation, and may obtain such professional advice as may be necessary. The Monitoring Officer will advise the Subject Member and the Complainant of the appointment of the Investigating Officer.
4. In carrying out the investigation, the Investigating Officer shall have regard to any relevant guidance issued by the Standards Board, and shall comply with any relevant direction given by the Standards Board.
5. The Investigating Officer may make such inquiries as he/she thinks necessary or expedient for the purposes of conducting the investigation, and may require any person to give such information or explanation as the Investigating Officer thinks necessary or expedient for the purpose of conducting the investigation. The Investigating Officer may require any of the relevant authorities concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation, and to provide reasonable access to such documents in the possession of that authority as appear to the Investigating Officer to be necessary for the purpose of conducting the investigation.
6. Statements will be prepared and agreed with each person interviewed during an investigation, including the Subject Member. The Subject Member will be advised that he/she may be accompanied by a professional representative or advisor, a Group colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative if they so wish.
7. The Investigating Officer will endeavour to complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation required.
8. Where during the course of the investigation, as a result of new evidence or information, the Investigating Officer forms an opinion that the matter is materially more serious or materially less serious than may have seemed apparent to the

Assessment Sub-Committee, when it made its decision to refer the matter for investigation, and that it would have made a different decision had it been aware of the new evidence or information, or where the Subject Member has died, is seriously ill or has resigned from the authority concerned, and the Investigating officer is of the opinion that in the circumstances it is no longer appropriate to continue with the investigation, the matter shall be referred to an Assessment Sub-Committee. The Assessment Sub-Committee shall consider the matter as if it were a new allegation.

9. The Investigating Officer, having concluded the investigation, will consider whether to produce a draft report before the final report. A draft report may be appropriate where the facts are complex or ambiguous, or where the facts are disputed. Any draft report will be issued to key parties to the investigation for review and comment, and will indicate that it does not necessarily represent the Investigating Officer's final finding.
10. If the Investigating Officer issues a draft report, he/she will consider whether the responses reveal a need for further investigation or for changes to the report. In some complex cases, the Investigating Officer may wish to issue a second draft report before the final report.
11. The Investigating Officer's final report will include a statement of the Investigating Officer's finding. The finding will be either that there has been a failure to comply with the code of conduct of the authority concerned, or as the case may be any other authority concerned ("a finding of failure"), or that there has not been a failure to comply with the code of conduct of the authority concerned, or as the case may be, of any other authority concerned ("a finding of no failure"). A copy of the report will be sent to the Subject Member and referred to the Standards Committee *or the original Assessment Sub-Committee, or another Sub-Committee of the Standards Committee* and to the Standards Committee of any other authority of which the Subject Member is a member, if that other authority so requests.
12. When the Standards Committee *or Assessment Sub-Committee or other Sub-Committee* considers the finding of the Investigation Officer, it shall make one of the following findings:
  - That it accepts the finding of no failure ("a finding of acceptance")
  - That the matter should be considered at a hearing by a Hearings Sub-Committee of the Standards Committee, or
  - That the matter should be referred to the Adjudication Panel for determination (but only if it has determined that the action it could take against the Subject Member would be insufficient were a finding of failure to be made, and the president or deputy president of the Adjudication Panel has agreed to accept the referral)
13. Where there is a finding of acceptance, written notice of that finding shall be given to the Subject Member, the Complainant, any parish council concerned, any ESO concerned and the Standards Committee of any other authority concerned, and notices shall be published as required by the relevant Regulations, unless the Subject Member requests otherwise.
14. Where the Standards Committee *or Assessment Sub-Committee or other Sub-Committee* decides to hold a hearing, this shall be conducted in accordance with the Committee's Pre-heating and Hearing Procedures.

**LANCASTER CITY COUNCIL STANDARDS COMMITTEE**

**PRE-HEARING PROCEDURE**

1. Where a Standards Committee or Assessment Sub-Committee or other Sub-Committee has made a finding that a matter should be considered at a hearing, the following procedure shall apply.
2. A Hearing Sub-Committee shall be convened in accordance with the principles set out in Appendix 1 hereto.
3. The Subject Member will be asked for a written response within fifteen days, which response shall set out the Subject Member's reply to the Investigating Officer's report and shall state whether he/she
  - disagrees with any of the findings of fact in the report, giving the reasons for any disagreement
  - wishes to be represented by a solicitor or barrister, or with the consent of the Sub-Committee by any other person
  - wishes to give evidence to the Sub-Committee, either orally or in writing
  - wishes to call relevant witnesses to give evidence to the Committee
  - wishes any part of the hearing to be held in private
  - wishes any part of the Investigating Officer's report or other relevant documents to be withheld from the public

Forms A-D appended hereto will be provided for this response.

4. The Subject Member shall be informed that if, at the meeting of the Sub-Committee, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the Sub-Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why it has not been raised beforehand.
5. Upon receipt of the Member's response, the Investigating Officer shall be invited to comment on it within ten working days, and to say whether or not he/she
  - wishes to call relevant witnesses to give evidence or submit written or other evidence to the Sub-Committee
  - wishes any part of the hearing to be held in private
  - wishes any part of the report or other relevant documents to be withheld from the public
6. Upon receipt of the Investigating Officer's response, the Chairman of the Sub-Committee and the Monitoring Officer or other legal adviser will consider the responses of the Subject Member and the Investigating Officer and set a date for the hearing in consultation with the Head of Democratic Services.
7. The Member and the Monitoring Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the hearing may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Sub-Committee to reach its decision.



8. Nothing in this procedure shall limit the Chairman of the hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.
9. The Monitoring Officer/Legal Adviser, in consultation with the Chairman, will:
  - confirm a date, time and place for the hearing, which must be within three months from the date on which the Investigating Officer's report was completed and not less than fourteen days after the report was sent to the Subject Member
  - confirm the main facts of the case that are agreed
  - confirm the main facts that are not agreed
  - provide copies of any written evidence to the relevant parties
  - confirm which witnesses will be called by the parties
  - provide the parties with copies of the proposed procedure for the hearing, specifying which parts of the matter, if any, may be considered in private

**APPENDIX 1 COMPOSITION OF THE HEARING SUB-COMMITTEE**

1. The Sub-Committee shall comprise five Members drawn from the full members of the Standards Committee, and of these, three shall be drawn from the Independent Members and Parish representatives, and two shall be elected Members of the Council.
2. The membership of the Sub-Committee will vary for each individual hearing, and will be determined by the Head of Democratic Services on the principles set out below. The Chairman of the Standards Committee will generally be a member of and the Chairman of the Sub-Committee. Otherwise, another independent member will be the Chairman of the Sub-Committee
3. In addition to the Chairman, the membership of the Sub-Committee will include two members selected from the other Independent Members of the Standards Committee and the Parish Members. Where the matter for determination relates to a parish council matter, at least one Parish Member will always be a member of the Sub-Committee.
4. In selecting the membership of a Sub-Committee, the Head of Democratic Services will endeavour to ensure that members are selected in rotation, taking into account their availability for the proposed hearing date, and any possible conflicts of interest. Wherever possible, members of the Assessment (and if relevant the Review Sub-Committee) which considered the complaint will not be appointed to the Hearing Committee, but it is recognised that there are occasions when this may be necessary provided that there is no conflict of interest.
5. Two elected members of the Council shall wherever possible (and it is acknowledged that this will not always be possible) be selected on the following principles:
  - neither Member should be a member of the same Group as the Member who is the subject of the hearing.
  - if the complainant is an elected Member of the Council, neither member should be a member of the same Group as the complainant.
  - The two Members should not be Members of the same Group.
  - Wherever possible there should be a gender balance on the Sub-Committee.

Subject to these principles, the Head of Democratic Services will endeavour to ensure that elected members of the Committee are selected in rotation, taking into account their availability for the proposed hearing date, and any possible conflicts of interest.

6. Once a Sub-Committee has been selected for a hearing, if a Member becomes unavailable to attend, the Head of Democratic Services will select a substitute from the membership of the Standards Committee, in accordance with the above principles.
7. The quorum of the Sub-Committee meeting shall be three members, of whom one must be an independent member, one must be an elected member, and if the hearing concerns a parish matter, the other must be a parish representative.

Please enter the number of any paragraph where you disagree with the findings of fact in the Monitoring Officer's report, and give your reasons and your suggested alternative.

**Member's response to the evidence set out in the Monitoring Officer's report**

Para. No. from MO's report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

Please attach separate sheets if necessary.

NAME:

SIGNED:

DATE:

Please set out below, using the numbered paragraphs, any other evidence you feel is relevant to the allegation made about you.

**Other evidence relevant to the allegation**

Para. No.	Details of the evidence
<b>1</b>	
<b>2</b>	
<b>3</b>	
<b>4</b>	
<b>5</b>	

Please attach separate sheets if necessary.

NAME:

SIGNED:

DATE:

## Arrangements for the Standards Committee Hearing

Please tick the relevant boxes.

1	<p>The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing?</p> <p>If "No", please explain why.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Reason:
2	Are you going to present your own case?	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
3	If you are not presenting your own case, will a representative present it for you?	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Name:
4	<p>Is your representative a practising solicitor or barrister?</p> <p>If "Yes", please give his or her legal qualifications. Then go to question 6.</p> <p>If "No", please go to question 5.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Qualifications:
5	<p>Does your representative have any connection with the case?</p> <p>If "Yes", please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Details:

NAME

SIGNATURE

DATE

<p><b>6</b></p>	<p>Are you going to call any witnesses? If "Yes", please fill in Form D.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
<p><b>7</b></p>	<p>Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)? If "Yes", please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p><b>8</b></p>	<p>Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)? If "Yes", please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p><b>9</b></p>	<p>Do you want any part of the hearing to be held in private? If "Yes", please give reasons.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p>
<p><b>10</b></p>	<p>Do you want any part of the relevant documents to be withheld from public inspection? If "Yes", please give reasons.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p>

NAME

SIGNATURE

DATE

**Details of proposed witnesses to be called**

	Name of witness or witnesses	1	
		2	
		3	
<b>WITNESS 1</b>			
<b>a</b>	Will the witness give evidence about the allegation?  If "Yes", please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence:
<b>b</b>	Will the witness give evidence about what action the Standards Committee should take if it finds that that the Code of Conduct has not been followed?	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence:
<b>WITNESS 2</b>			
<b>a</b>	Will the witness give evidence about the allegation?  If "Yes", please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence
<b>b</b>	Will the witness give evidence about what action the Standards Committee should take if it finds that that the Code of Conduct has not been followed?	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence

WITNESS 3			
<b>a</b>	<p>Will the witness give evidence about the allegation?</p> <p>If "Yes", please provide an outline of the evidence the witness will give.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Outline of evidence
<b>b</b>	<p>Will the witness give evidence about what action the Standards Committee should take if it finds that that the Code of Conduct has not been followed?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	Outline of evidence

NAME

SIGNED

DATE



## **LANCASTER CITY COUNCIL STANDARDS COMMITTEE**

### **HEARING PROCEDURE**

1. The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interests of fairness.
2. The Subject Member may be represented or accompanied during the meeting by a solicitor or barrister, or with the permission of the Sub-Committee, another person. It is the responsibility of the Subject Member to arrange any representation.
3. The Sub-Committee may take legal advice from its legal adviser at any time during the hearing or during its deliberations. The substance of any advice given to the Sub-Committee will be shared with the Subject Member and Investigating Officer if they are present at the hearing.
4. At the start of the hearing, the Chairman shall introduce each of the members of the Sub-Committee, the Subject member (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Sub-Committee will follow in the conduct of the hearing.
5. The Sub-Committee shall then confirm that it is quorate, and deal with any disclosures of interests.
6. If the Subject Member is not present at the start of the hearing:
  - The Chairman will ask the Monitoring Officer/Legal Adviser whether the Subject Member has indicated his/her intention not to attend the hearing
  - The Sub-Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend
  - If the Standards Committee is satisfied with such reasons, it shall adjourn the hearing to another date
  - If the Standards Committee is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Sub-Committee shall decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.
7. After the preliminary procedures, the Sub-Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
8. If there is disagreement, the Investigating Officer will present the evidence which is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The Subject Member and the Sub-Committee members may ask questions of the Investigating Officer or any witness.
9. The Subject Member or his/her representative will then present the evidence that is relevant to the facts in dispute. With the permission of the Sub-Committee, witnesses can be called to give relevant evidence. The Investigating Officer and the Sub-Committee members may ask questions of the Subject Member or any witnesses.

10. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject Member's explanation, the Sub-Committee may continue with the hearing, relying on the information in the report, may allow the Subject member to make representations about the issue and invite the Investigating Officer to respond and call any witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.
11. The Sub-Committee will consider in private all the evidence which it has heard in order to establish its findings of fact, and to reach a conclusion as to whether there has been a failure to comply with the Code of Conduct.
12. At any stage in the consideration of the matter, the Sub-Committee may return to ask further questions of the Investigating Officer or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
13. At the conclusion of the Sub-Committee's deliberations, the Chairman will advise the Subject member and the Investigating Officer of their findings.
14. If the Sub-Committee concludes that the Subject Member has failed to comply with the Code of Conduct, the Chairman will invite representations from the Investigating Officer and the Subject Member as to what action, if any, it should take. The Sub-Committee may ask questions of the Subject Member and the Investigating Officer. The Subject Member will be invited to make any final relevant points.
15. The Sub-Committee shall then consider in private whether to impose a sanction, and, if so, what sanction to impose and when that sanction should take effect.
16. The sanctions open to the Sub-Committee are:
  - censure of the Subject Member
  - restriction for a period not exceeding six months of the Subject Member's access to the premises of the authority or use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and do not unduly restrict the person's ability to perform the functions of a member
  - partial suspension of the Subject Member for a period not exceeding six months;
  - suspension of the Subject Member for a period not exceeding six months
  - that the Subject Member submits a written apology in a form specified by the Sub-Committee
  - that the Subject Member undertakes such training as the Sub-Committee specifies
  - partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member submits a written apology in a form specified by the Sub-Committee
  - partial suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies

- suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has submitted a written apology in a form specified by the Sub-Committee
  - suspension of the Subject Member for a period not exceeding six months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Sub-Committee specifies
  - any combination of the above sanctions
17. Any sanction imposed by the Sub-Committee shall commence immediately unless the Sub-Committee directs that a sanction shall commence on another date within six months from the imposition of the sanction.
18. In deciding to impose a sanction, the Sub-Committee shall consider all the relevant circumstances and shall have regard to any relevant Guidance issued by the Standards Board
19. The Chairman will announce the decision of the Sub-Committee. Written notice of the findings of the Sub-Committee will be given as soon as is reasonably practicable to the Subject Member, the Standards Board, the Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation. Public notices shall be given in accordance with the Regulations.
20. Where the Sub-Committee determines that the Subject Member has failed to comply with the Code of Conduct, the Chairman shall inform the Subject Member of the right to seek permission to appeal against the Sub-Committee's finding or any sanction imposed by sending a notice in writing to the President of the Adjudication Panel for England at 23 Victoria Avenue, Harrogate, HG1 5RD within 21 days of receipt of the written notice of findings.
21. The Sub-Committee may consider making any recommendations to the authority concerned with a view to promoting higher standards of conduct among its members.

**STANDARDS COMMITTEE****PROTOCOL ON PUBLICITY FOR COMPLAINTS OF  
BREACH OF THE CODE OF CONDUCT MADE TO THE  
STANDARDS COMMITTEE****19th June 2008****Report of the Monitoring Officer****PURPOSE OF REPORT**

To recommend changes to the Publicity Protocol in the light of the new provisions for complaints to be made to the Standards Committee rather than to the Standards Board for England.

**This report is public**

**RECOMMENDATIONS**

- (1) **That the Council Business Committee be recommended to approve the amended Protocol as appended to this report, for inclusion in the Council's Constitution**

**1.0 Introduction**

1.1 The Council's Constitution currently contains a Protocol on publicity for and notification of allegations of breach of the Code of Conduct made to the Standards Board. The Protocol was introduced because the Committee felt that it was inappropriate for Members to discuss an allegation in public before the Standards Board had taken a decision as to whether or not the allegation should be investigated, or, if the allegation was to be investigated, before the investigation and hearing process had been concluded.

1.2 In the light of the new provisions for complaints of alleged breach of the Code of Conduct to be made locally to the Standards Committee rather than nationally to the Standards Board for England, the current Protocol has become obsolete.

**2.0 Proposal Details**

2.1 At its meeting on the 23rd May 2008, the Committee took the view that a member who is the subject of a complaint should not be informed of the complaint until after it has been considered by the Assessment Sub-Committee.

2.2 The Monitoring Officer has prepared an amended version of the Protocol, which reflects this, and also reflects the rationale of the existing Protocol, that Members should not make Code of Conduct complaints public, or discuss such complaints in public.

**3.0 Consultation**

3.1 The Committee requested this report at its last meeting. There has been no other consultation.

**4.0 Options**

4.1 The options open to the Committee are to recommend the Council Business Committee to approve the revised Protocol appended to this report, with or without further amendments, or to recommend the Council Business Committee not to include such a Protocol in the Constitution. The Monitoring Officer would recommend the adoption of the Protocol appended to this report.

**5.0 Conclusion**

5.1 The Committee's views are sought.

**CONCLUSION OF IMPACT ASSESSMENT  
(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None arising from this report.

**FINANCIAL IMPLICATIONS**

There are no financial implications as a result of this report.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments to add.

**LEGAL IMPLICATIONS**

Legal Services have been consulted and have no further comments.

**MONITORING OFFICER'S COMMENTS**

The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.

**BACKGROUND PAPERS**

None

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## **PART 5, SECTION 3**

### **PROTOCOL ON PUBLICITY FOR COMPLAINTS OF BREACH OF THE CODE OF CONDUCT MADE TO THE STANDARDS COMMITTEE**

#### **Introduction**

The purpose of this Protocol is to provide guidance to Members as to their conduct when referring an alleged breach of the Code of Conduct to the Standards Committee, or when they are the subject of such an allegation, or are aware of such an allegation.

#### **Background**

There is no statutory mechanism preventing those making a complaint to the Standards Committee (or those the subject of such a complaint) making the nature of the allegation known to the press and public, or making public comment on the allegation. Any such comments would be subject to the general law of defamation, and a Member could seek a court injunction to prevent the publication of defamatory material.

A Member who is the subject of a complaint made to the Standards Committee will not be notified of the complaint until the Assessment Sub-Committee of the Standards Committee has met to consider what action, if any, to take in respect of the complaint.

The Council has therefore adopted this Protocol.

#### **Guidance to Members**

When a Member has made or is considering making a complaint to the Standards Committee alleging a breach of the Code of Conduct, the Member should not make the complaint or allegation known to any other Member, or to the public in any forum, whether at a meeting that is open to the public or through the press or media, and should not discuss the complaint or possible complaint in such a manner as is reasonably likely to cause the complaint to be made known to the public.

It is recognised that a Member who has made or is considering making a complaint to the Standards Committee may wish to discuss the matter within the Member's own political group or seek advice from a third party. In such cases, it is the Member's responsibility to ensure that any person(s) in whom the Member confides agree(s) not to make the information known to the press and/or public or to other Members.

A Member who is aware of a complaint should not make any public comment on it, and the matter should not be the subject of discussion or debate within the Council.

Likewise, once a Member becomes aware that he/she is the subject of a complaint or allegation to the Standards Committee, the Member should not make any public or press comment on it.

This guidance applies until the complaint has been resolved. This will be as follows:

- Where the Assessment Sub-Committee decides that no action should be taken, the complaint will be deemed to be resolved after the expiry of the time limit for the complainant to request a review, or where a review is requested, after the Review Sub-Committee has made a decision that no action should be taken.
- Where the Assessment Sub-Committee or Review Sub-Committee refers the complaint to the Monitoring Officer for action other than investigation, the allegation will be deemed to have been resolved after that action has been completed.

- Where the Assessment Sub-Committee or Review Sub-Committee refers the complaint to the Monitoring Officer or the Standards Board for England for investigation, the complaint will be deemed to have been resolved after the Standards Committee has accepted a finding of no failure to comply with the Code, or after the complaint has been considered at a hearing of the Standards Committee or the Adjudication Panel.

This Protocol does not bind members of the public.

Where a complaint is made to the Standards Committee by a member of the public, this may become known to the public through the press or some other medium.

In these circumstances, this Guidance does not preclude the Member who is the subject of the complaint from making a public comment, although it is recommended that the Member should carefully consider the appropriateness of so doing. Until the complaint is resolved (as described above) no other Member who is aware of the complaint should make any public comment on it, and the matter should not be the subject of discussion or debate within the Council.



**STANDARDS COMMITTEE****PROCEDURE FOR CONSIDERING ALLEGATIONS OF  
BREACH OF THE COUNCIL'S PROTOCOLS****19th June 2008****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to consider the procedure to be followed for dealing with allegations that a Member has failed to comply with one of the Council's Protocols.

**This report is public**

**RECOMMENDATIONS**

- (1) That the Committee consider the procedure to be followed for dealing with allegations that a Member has failed to comply with one of the Council's Protocols, and for the time being maintain the current procedure of investigation by the Monitoring Officer, with the Monitoring Officer's report then being considered in accordance with the investigation, pre-hearing and hearing procedures.

**1.0 Introduction**

- 1.1 The Council has a number of Protocols which supplement the Code of Conduct. These are the Protocol on Planning, the Protocol on Member/Officer Relations and the Protocol on Publicity for Allegations of breach of the Code of Conduct (referred to elsewhere in this agenda).
- 1.2 The Terms of Reference of the Committee include dealing with allegations of breach of the Protocols. However, the Protocols do not form part of the Code of Conduct, and any breach does not therefore constitute a breach of the Code of Conduct. The provisions of the Local Government Act 2000 (as amended) and the Standards Committee (England) Regulations 2008 do not apply to complaints relating to the Protocols, and the sanctions of the Committee in the event of a finding of breach of Protocol would be limited to the "naming and shaming" of the member, or the offering of advice to the member. It would also be open to the Committee to suggest more general changes to working practices to prevent such a problem or complaint arising in the future.
- 1.3 Whilst the Protocols are included in the Council's Constitution, they are generally for internal use only, and it is anticipated that any allegation of breach would be made by

another Member of the Council rather than by a member of the public. Over the past few years, only one formal complaint of breach of Protocol has been received.

- 1.4 At its meeting on the 23rd February 2007, the Committee resolved that its procedure for considering reports on investigations relating to alleged breaches of Protocol be similar to the statutory procedure for considering reports on investigations initiated by the Standards Board. That decision needs to be reviewed in the light of the new arrangements for Code of Conduct complaints.

## **2.0 Proposal Details**

- 2.1 The decision of the 23rd February 2007 presupposed that all complaints of alleged breach of Protocol would be investigated by the Monitoring Officer. It would be possible to continue on this basis, with any complaint received being investigated by the Monitoring Officer, and her report then being referred to the Standards Committee (or a Sub-Committee) in accordance with the investigation, pre-hearing and hearing procedures adopted by the Committee for Code of Conduct complaints.

- 2.2 However, this would mean that there would be no filtering process for breach of Protocol complaints as there is for Code of Conduct complaints. The consequence would be that all breach of Protocol complaints would be investigated. The Committee might wish to introduce a filtering process, along the lines of the assessment process for Code of Conduct complaints. However, this could not be the same process, as the options available on assessment would not be the same, and the ordinary access to information rules would apply to any assessment sub-committee dealing with Protocol breaches.

- 2.3 The Monitoring Officer would recommend that, in view of the infrequency of Protocol complaints to date, it would be simpler and preferable for the time being to continue as at present, with the Monitoring Officer investigating any complaint, and the report then being considered in accordance with the investigation, pre-hearing and hearing procedures. To have a parallel, but inevitably different, assessment process for Protocol complaints would appear to be unnecessarily bureaucratic and complicated, especially at this early stage when we have no experience of how the statutory assessment filter will work in practice. The position could then be reviewed in the future

## **3.0 Consultation**

- 3.1 The Monitoring Officer has consulted other Monitoring Officers on how they intend to deal with breaches of Protocol. It would appear that many authorities do not have protocols or have never had occasion to consider allegations of breach of Protocol, and they do not therefore see this as an issue for them. The few that have considered the issue are intending not to apply any assessment/filter process to Protocol complaints.

## **4.0 Options**

- 4.1 The options open to the Committee are as set out in paragraphs 2.1 and 2.2 above. The Monitoring Officer would recommend for the time being the option set out in 2.1.

## **5.0 Conclusion**

- 5.1 The Committee's views are sought.

**CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None arising from this report.

**FINANCIAL IMPLICATIONS**

There are no financial implications as a result of this report.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments to add.

**LEGAL IMPLICATIONS**

Legal Services have been consulted and have no further comments.

**MONITORING OFFICER'S COMMENTS**

The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.

**BACKGROUND PAPERS**

None

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