	STANDARDS COMMITTEE 11 JUNE 2008	Agenda Item No.
Title	Processes for hearings on Code of Conduct complaints and Dispensation applications.	
For further information about this report please contact	Simon Best (01926) 456606 simon.best@warwickdc.gov.uk	
Service Area	Chief Executive's Department. Legal Services.	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	NO	
Date and meeting when issue was last considered and relevant minute number	Standards Committee 16 April	
Background Papers	Standards Board for England publications:- 'Standards Committee training exercise...' 'Code of Conduct – Guide for members' 'Local Assessment of Complaints guidance' 'Standards Committee determinations'	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director	3 June 2008	Chris Elliott
Chief Executive		is relevant Director
CMT		
Section 151 Officer		
Legal		is author
Finance	3 June 2008	Marcus Miskinis
Portfolio Holder(s)	2 June 2008	Cllrs Doody & Kirton

Consultation Undertaken

The materials attached to this report have been tested in training exercises by the committee

Final Decision?

No

Suggested next steps (if not final decision please set out below)

The Committee comments upon potential improvements to procedures and checklists after each use, and reviews at next available committee in the event of revised guidance from the Standards Board for England and or emerging case law.

1. SUMMARY

- 1.1 This report brings together the revised checklists from earlier training exercises and the summaries of the processes followed by the committee during the various training exercises.
- 1.2 Updates to the procedures will be probably become evident after use. It is likely that revised guidance form the Standards Board for England may also affect the processes and paperwork used by the committee once local determinations become more frequent.

2. RECOMMENDATION

- 2.1 The Committee adopts the materials attached to this report as the basic processes and checklists for the conduct of local determinations and for the determination of dispensation applications.
- 2.2 The Committee notes that each process requires an element of pre-hearing work to assess the nature of the matters to be put before the committee. During this process it may become evident that the basic processes need to be varied to take account of particular circumstances as they arise. Variations to the process should be recorded during the particular determination.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The Standards Board for England published "*Standards Committee determinations; Guidance for monitoring officers and Standards Committees*" in July 2003. That guidance remains relevant to the general conduct of the Committee when dealing with determinations. This applies to both local determinations and determinations after they have been remitted to the Standards Committee by the Standards Board for England.

- 3.2 A number of changes in the standards environment have occurred over the last year, and a number came into force in the last few months. Training materials have been designed by the Standards Board for England and these have been used by the Committee in training exercises.
- 3.3 Although the training materials are reasonably comprehensive the guidance in *“Standards Committee determinations; Guidance for monitoring officers and Standards Committees”* from 2003 remains relevant. It is possible to design a checklist to remind those present at a determination to follow the process recommended by the 2003 publication. This has been tested in a training exercise by the committee. The Standards Board for England has supplemented the 2003 publication with a diagram setting out the process that summarises the procedure for local determinations. The Standards Board for England process diagram and the checklist are attached as Appendix 1.
- 3.4 Dispensation applications are rarer, and more difficult to predict. There are no training materials published by the Standards Board for England on this subject. A training exercise based on a genuine dispensation application known to the Monitoring Officer when he worked at another authority provided the committee with the opportunity to consider how it would like to handle dispensation applications. A process diagram in the same style as that of the local determination process described by Standards Board for England has been designed. A checklist to assist the committee in its determinations has also been designed. Both the process diagram and the checklist for dispensation applications are attached as Appendix 2.
- 3.5 The Committee will use other materials including its own guidance notes and materials as will be necessary from time to time. The process diagrams and checklists attached to this report are intended to provide a summary of both process and procedure for those interested in the work of this committee.

4. ALTERNATIVE OPTION CONSIDERED

- 4.1 None. The Standards Board for England guidance is useful, and the description of the committee’s basic processes is useful for both the Committee and for those interested in the work of the Committee. The opportunity to tailor the process as and when required should give the committee the flexibility it requires to accommodate circumstances which may particular to specific cases.

5. BUDGETARY FRAMEWORK

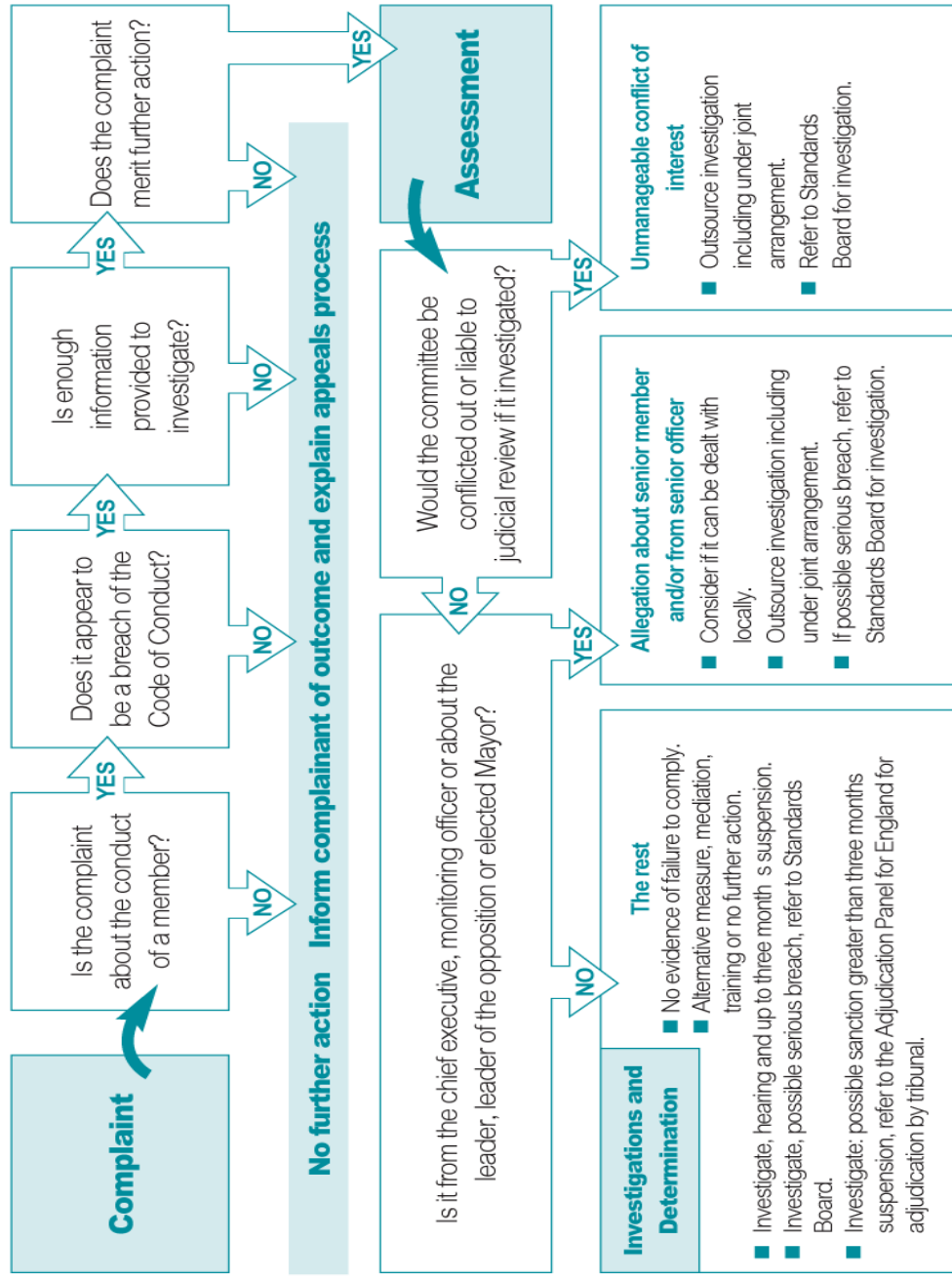
- 5.1 This statement is produced by the staff employed by the authority, within current resources.

6. **POLICY FRAMEWORK**

- 6.1 The proposals will assist the Council in furtherance of its Corporate and Strategic Leadership priority. The formal recording of the processes, combined with regular training by the committee means that the Council will provide clear community leadership and effective management of resources whilst delivering responsive public services in an open and transparent manner.

Appendix 1
Materials for Local Determination

Local assessment complaint handling chart



Standards Committee.

“*Standards Committee Determinations*”, Standards Board for England, July 2003

Timing

See p3 of “*Standards Committee Determinations*”.

- The hearing must be within 3 months of the Monitoring Officer receiving the Ethical Standards Officer’s (ESO) report. It must be not earlier than 14 days after the member gets the report.
- A copy of the report must be sent to the member by the Monitoring Officer.
- If the member does not attend then the Committee may consider the matter in their absence. If the Standards Committee receives a request for a delay and is satisfied with the reason, then another date is to be arranged.
- The matter cannot be referred back to the Standards Board for England.

Scheduling

See p4 of “*Standards Committee Determinations*”.

- “..aim to complete a hearing in one sitting..”
- “or in consecutive sittings of no more than one working day in total..”
- ‘...Late night hearings are not ideal..”

Pre-Hearing Process

See p4 of “*Standards Committee Determinations*”.

- Process to deal with procedural issues only.
- Identify if a member disagrees with any findings of fact by the ESO.
- Decide if disputed findings of fact are significant.
- Decide whether or not to hear evidence about disputed facts.
- Decide if any part of the hearing should be held in private.
- Decide if any part of the ESO’s report should be withheld from the public.

Response of the Member

Form A – Member’s response to the evidence set out in the ESO’s report
See p27 of “*Standards Committee Determinations*”.

Form B – Other Evidence relevant to the Determination
See p29 of “*Standards Committee Determinations*”.

Form C – Representations to be taken into account if a member is found to have failed to comply with the terms of the Code of Conduct.
See p31 of “*Standards Committee Determinations*”.

Form E – Details of the Witnesses to be called.
See p34 - 35 of “*Standards Committee Determinations*”.

Form F – Checklist for the Pre-Hearing Process
See p36 of “*Standards Committee Determinations*”.

Procedures for Local Determination Hearings Checklist for Chair & members.

Paragraph Numbers refer to Paragraphs within the 'Model hearing procedures for the Standards Committee' set out in Appendix 2, pages 37 – 41 "Standards Committee Determinations".

Page numbers refer to pages within "Standards Committee Determinations".

Preliminary matters

- | | | Yes | No |
|---|---|--------------------------|--------------------------|
| 1 | Is the Member represented / accompanied by Solicitor/Counsel?
<i>Paragraph 5.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 | Is the Member represented / accompanied by another person?
<i>Paragraph 5.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| | Has the Committee consented to the other person's role?
<i>Paragraph 5.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Chair's introduction to explain how the Committee will run hearing.
<i>Paragraph 7.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | Preliminary procedures agreed where not resolved by the pre-hearing process.
<i>Paragraph 8.</i> | <input type="checkbox"/> | <input type="checkbox"/> |

Making Findings of Fact

- | | | Yes | No |
|---|--|--------------------------|--------------------------|
| 5 | Any significant disagreements about the facts?
<i>Paragraph 9.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 | Representations from the Investigator?
<i>Paragraph 11.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| | Has the Committee consented to Investigator calling witnesses?
<i>Paragraph 11.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 | Witnesses challenged by the Member?
<i>Paragraph 11.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8 | Representations from the Member?
<i>Paragraph 12.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| | Has the Committee consented to Member calling witnesses?
<i>Paragraph 12.</i> | <input type="checkbox"/> | <input type="checkbox"/> |

9 Committee considers representations?
Paragraph 16. Yes No

Chairman to announce the Committee's findings of fact?
Paragraph 17. Yes No

Has there been a failure to follow the Code?

10 Committee to consider if the facts show there been a failure to follow the Code?
Paragraph 18. Yes No

11 Member to be invited to give reasons why the committee should not decide there has been a failure to follow the Code?
Paragraph 19. Yes No

12 Committee to consider verbal or written representations from the Investigator.
Paragraph 20. Yes No

13 Member invited to make any final relevant points.
Paragraph 22. Yes No

14 Committee considers representations?
Paragraph 23. Yes No

Chairman to announce the Committee's findings of fact?
Paragraph 24. Yes No

If there is finding of NO failure to follow the Code

15 Committee to consider whether there are recommendations to be made to the authority?
Paragraph 25. Yes No

If the member is found to have failed to follow the Code

16 Representations from the Investigator?
Paragraph 26. Yes No

17 Representations from the Member?
Paragraph 26. Yes No

18 Legal advice obtained?
Paragraph 27. Yes No

Yes No

19 Committee considers representations?
Paragraph 28.

20 Whether Committee should impose a penalty or not?
Paragraph 28. Yes No

21 Which penalty?
• Censure
• Up to 3 months restrictions of resources
• Suspension in whole or part for up to 3 months
• Suspension in whole or part for up to 3 months upon condition
• Any delay in the penalty – 0-6 months

Page 24.

22 Chairman to announce the Committee's findings of fact?
Paragraph 29. Yes No

23 Committee to consider whether there are recommendations to be made to the authority?
Paragraph 30. Yes No

The Decision Yes No

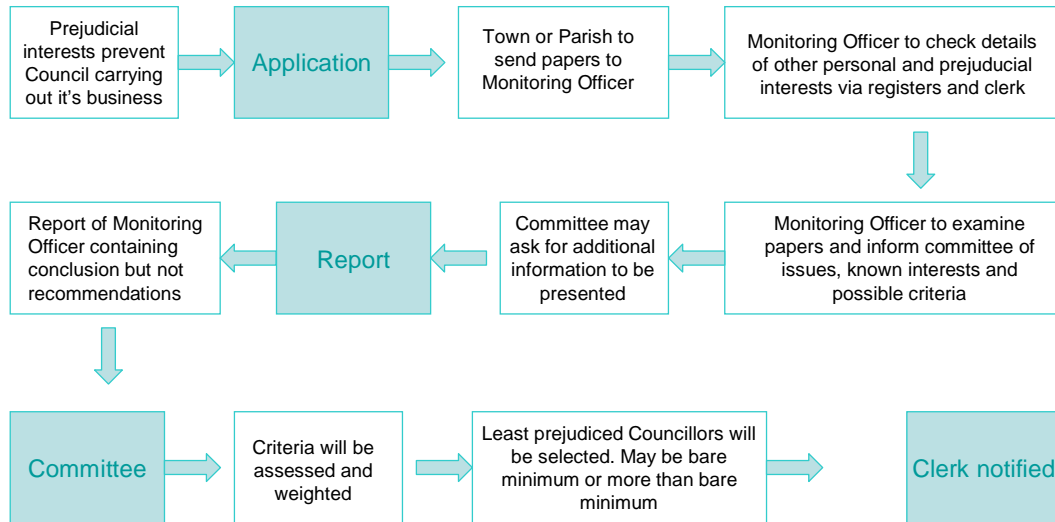
24 Announce decision with short written summary.
Paragraph 31.

25 Full written decision issued.
Paragraph 31. Yes No

26 Publication in local paper.
Page 24. Yes No

Appendix 2
Materials for Dispensation applications

WDC process for Dispensation applications



Procedures for Hearings re Dispensations
Checklist for Chair & members.

Preliminary matters

- | | | | |
|----|---|--------------------------|--------------------------|
| | | Yes | No |
| 1 | Is any Member attending? | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Yes | No |
| 2 | Is the Member represented / accompanied by another person? | <input type="checkbox"/> | <input type="checkbox"/> |
| | (If yes, has the Committee consented to the other person's role?) | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Yes | No |
| 27 | Chair's introduction to explain how the Committee will run hearing. | <input type="checkbox"/> | <input type="checkbox"/> |

Making Findings of Fact

- | | | | |
|----|--|--------------------------|--------------------------|
| | | Yes | No |
| 28 | Any significant disagreements about the facts? | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Yes | No |
| 29 | Evidence or Witnesses challenged by the Member? | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Yes | No |
| 30 | Representations from the Member? | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Yes | No |
| 31 | Has the committee consented to any request to call witnesses | <input type="checkbox"/> | <input type="checkbox"/> |
| | | Yes | No |
| 32 | Committee consideration of representations | <input type="checkbox"/> | <input type="checkbox"/> |

Dispensations

- | | | |
|----|---|-------|
| 33 | How many members have not applied for a dispensation? | ----- |
| 34 | How many members are required for a quorum? | ----- |
| 35 | How many dispensations are required? | ----- |

36 What is the prejudicial interest for the members that require dispensations?

.....
.....
.....

37 Representations on behalf of those seeking dispensations?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

38 Representations on behalf of those who may be denied dispensations?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

39 Committee to make any findings of fact

.....
.....
.....
.....
.....

40 Committee considers representations?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

41 Who are the least affected members?

[Clerk to make detailed notes of reasoning, and either descending order or ascending order. Any matrix used to be attached as copy to this note when original placed on file].

.....
.....
.....
.....
.....
.....
.....
.....

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

The Decision

42 Announce decision with short written summary.

43 Full written decision issued.

44 Publication in local paper?

Yes No

Yes No