

 Standards Committee 30 October 2012		Agenda Item No. 8
Title	Dispensations for Councillors & procedures	
For further information about this report please contact	Graham Leach Civic & Committee Services Manager graham.leach@warwickdc.gov.uk	
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Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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	N/A	
Background Papers	Localism Act 2012 and Warwick District Code of Conduct for members	

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
Equality & Sustainability Impact Assessment Undertaken	No

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive		
Head of Service		
CMT		
Section 151 Officer		
Monitoring Officer	19 October 2012	Andrew Jones
Finance		
Portfolio Holder(s)		
Consultation & Community Engagement		
Mr P Willers (one of the Independent Persons for the Council) was consulted on the report.		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		
N/A		

1. SUMMARY

- 1.1 The proposals set out in this report are aimed to protect members from inadvertent breaches of the requirements related to Disclosable Pecuniary Interests due to omissions and ambiguities in the new legislation and to ensure that the council can conduct its business.

2. RECOMMENDATION

- 2.1 The Committee agrees the remit and procedure for considering dispensations as set out at Appendix 1 to the report
- 2.2 That the Committee grants dispensations up to elections for the Council in May 2015 to all councillors allowing them to both speak and vote in relation to the following functions of the District Council
- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
- 2.3 That the Committee grants the following dispensations up to elections for the Council in May 2015 to District Councillors who are elected members or co-opted members of another public authority and who have a disclosable pecuniary interest in a matter **only by virtue of the fact** that they are in receipt of expenses from that other authority
- (a) Where the matter would affect the financial position of that other authority the councillor may speak on the matter provided they immediately withdraw from the meeting room
 - (b) In relation to other matters affecting that other authority the district councillor may speak and vote.
- 2.4 That the sub-committee grants the following dispensations up to elections for the Council in May 2015 to Councillor Boad, Cross, Davies, Knight and Shilton in respect of circumstances where they have a disclosable pecuniary interest in a matter relating to another authority **only by virtue of the fact** that their spouse is an elected member of that other authority and in receipt of an allowance from that other authority
- (a) Where the issue is a matter of dispute between the county council and the other authority and the matter would affect the financial position of that other authority the county councillor may speak on the matter provided they immediately withdraws from the meeting room

- (b) In relation to other matters affecting that other authority the county councillor may speak and vote.

2.5 The Committee notes the understanding to use the procedures for investigations and Hearings as previously operated and appended to this report, subject to the agreement of the new Chairman of the Committee.

3. **REASONS FOR THE RECOMMENDATION**

3.1 With the Constitution the Standards Committee is responsible for considering and determine requests for dispensation from requirements relating to the adopted Members' Code of Conduct.

3.2 Dispensations can be granted (in certain circumstances) allowing a member to speak and or vote where they have a disclosable pecuniary interest. The application must be made in writing to the proper officer (Chief Executive). At present no written applications have been made to the Chief Executive, but officers have taken what is seen as a proactive approach in presenting the report to ensure

3.3 Dispensations for up to four years can be granted (in certain circumstances) allowing a member to speak and or vote where they have a disclosable pecuniary interest. The application must be made in writing to the proper officer (Chief Executive).

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3.5 At present there is a lack of clarity with regard to members participation in the matters outlined in 2.2 where they have a DPI as well as an "other interest". This dispensation would provide that clarity.

3.6 When the new Code of Conduct and procedures were adopted the Monitoring Officer (in consultation with the Chairman of the Committee and Independent Persons) was asked to write and implement procedures for investigations and hearings. Having reviewed the previous documents and taken advice from Legal Services on these, the Monitoring Officer has determined that the previous arrangements in these areas were still fit for purpose. Although not required to report this back to Standards Committee the Monitoring Officer was of the opinion that they should be aware.

3.7 Once the procedures for investigations and hearings are complete they will be published on the Council's website and a link to these will be emailed to all Councillors as well as Parish & Town Council Clerks.

4. **POLICY FRAMEWORK**

4.1 **Policy Framework** – The report proposes no changes to the Council's Policy Framework.

4.2 **Fit for the Future** – The report enables the Council to work effectively and enhances the Council value of honesty and openness.

5. BUDGETARY FRAMEWORK

- 5.1 There is no direct impact on either the Budgetary Framework or Budget of the Council arising from this report.

6. ALTERNATIVE OPTION(S) CONSIDERED

- 6.1 The Standards Committee needs to consider each application on its individual merits. However officers believe that the general dispensations for these applications enable the Council to function effectively and openly.
- 6.2 The Standards Committee could establish a Sub-Committee to consider future applications of this nature if it so wished.

7. BACKGROUND

- 7.1 There is considerable debate about the interpretation of some of the new legislation and whether matters are covered or not and different authorities are taking different views. However as there are potential criminal sanctions our view is that the position should be absolutely clear in the interests of both members and the public.
- 7.2 Previous legislation relating to the Code of Conduct has provided blanket exemptions to ensure certain types of business can be dealt with by local authorities. These are to cover circumstances where the local authority may not be able to achieve a quorum due to the number of members likely to have such an interest. The new legislation relating to disclosable pecuniary interests (DPI) has not made similar provision. All councillors will for example be council tax payers and/or business rate payers.
- 7.3 The impact of having a disclosable pecuniary interest is that the member is barred from participating in any discussion or vote on a matter in which they have a DPI. However the new legislation has provided arrangements for granting dispensations. Therefore the Committee is asked to grant similar dispensations to all district councillors to ensure the business of the local authority can be transacted.
- 7.4 A particular issue has arisen with regard to member allowances and the position of dual hatted members. It appears that a dual hatted member in receipt of an allowance from another authority has a disclosable pecuniary interest. It appears it may preclude a dual hatted member from participating in any discussion involving that other authority whether the matter is of a financial or non-financial nature.
- 7.5 This clearly has a significant impact on local democracy and the ability of members to make representation on local issues. Many issues require the co-operation of partners to enable delivery and this issue has the potential to exclude large numbers of members from discussion and debates.
- 7.6 In addition to this report the Monitoring Officer is investigating the need for granting of dispensation at Parish/Town Council level and will be issuing guidance to those authorities in due course.

Dispensation

You may make an application for a dispensation allowing you to speak and/or vote in relation to a matter in which you have a disclosable pecuniary interest by writing to the Chief Executive. You should set out your disclosable pecuniary interest and the reasons why you believe you should be allowed to speak and /or vote in relation to the matter. The Chief Executive will refer your application to the Standards Committee for consideration.

Terms of Reference

To grant dispensations from either or both of the restrictions in section 31(4) Localism Act 2011 i.e. restrictions on participation and voting in relation to matters in which a member has a disclosable pecuniary interest, if in all the circumstances it considers

- (a) that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
- (b) that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) that granting the dispensation is in the interests of persons living in the authority's area,
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or
- (e) that it is otherwise appropriate to grant a dispensation.

HOW TO CONDUCT AN INVESTIGATION

Introduction

This is a guide for monitoring officers carrying out investigations and other action relating to allegations referred to them by standards committees or ethical standards officers.

This guide provides an introduction to the practice of investigation and is designed to assist anyone delegated to investigate allegations of misconduct. You should be aware that the process can be a frightening and stressful experience for the subject member, witnesses and complainant.

We hope this guidance will assist you in ensuring that:

- you establish what happened in a fair and objective manner
- you set out clearly the reasoning for the finding reached
- you complete the investigation promptly and proportionately

Planning the investigation

You will need to keep a written record to demonstrate what was considered at the start of each investigation. This document is most likely to take the form of an investigation plan.

The following areas should be covered in the plan:

- The complaint made against the subject member. You may find it necessary to seek clarification from the complainant.
- The paragraphs of the Code of Conduct that may have been breached. Please note that you do not need to accept the complainant's interpretation of what paragraphs may have been breached. It is helpful to breakdown each potential failure to comply into the component parts of each provision.
- The facts which need to be determined to establish if the member breached the Code and to decide what the appropriate finding might be. They need to include:
 - facts which would establish if the conduct happened as alleged
 - facts that would need to be proven to show that the conduct constituted a breach of the Code
 - facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology
- The evidence that you would need to determine the issues outlined in your plan. This includes who you will need to interview and why.
- The evidence that has been supplied by the complainant or, in the case of an investigation plan review, the evidence that you have gathered.
- How you plan to gather the evidence that you need.
- How long you think it is likely to take you.

If at any stage in the investigative process there are significant changes to any of the above areas, an investigation plan review may need to be completed.

At the start of the investigation you should contact the complainant and subject member to advise them of your contact details and provide them with a preliminary timescale for the investigation.

At the end of your investigation you should have documents which chart the approach you took to the investigation, the reasons for this approach, and when you changed your approach. You do not need to share these documents with the parties involved in the investigation – they are for you to use as you wish. Their main function is as a planning tool, but they also provide an audit trail should your investigation be the subject of a complaint or review.

Documentary evidence

Documentary evidence should be sought before you conduct any interviews and at the earliest opportunity.

When drafting the investigation plan it is helpful to make a list of the documents you need and who they will be obtained from. This list can then form the basis of the first contact you make with the parties and other witnesses.

It is a good idea to invite the subject member to provide an initial response to the allegation in writing when first making written contact with them. This gives members the opportunity to admit to the breach if they would like to do so, and could then save time and effort for all involved. A written response may also provide you with additional useful information before the interview stage.

How to compile documentary evidence

Requests for information should be made in writing, even if the initial contact was made by phone.

- Explain the authority you have for asking for the documents.
- Explain the broad purpose for which you need the document, for example “an investigation into the conduct of Councillor X”. You do not need to provide the detail of the complaint against the member at this stage.
- Outline the confidentiality requirements that relate to the information request.
- Set a deadline for response.
- Provide a contact name and number for further enquiries.

What if...

The evidence is held on a computer?

It is good practice to identify the person using the computer in investigations that rely on computer generated documents.

It may be appropriate to search the hard drive for deleted or corrupted documents. A specialist firm may be employed to facilitate this.

The information is highly sensitive?

In certain cases, you may wish for a subject member or other party not to be made aware of a request for evidence.

For example, if you consider that this might lead to destruction of evidence by one of the parties or to the improper collaboration of witnesses. In such circumstances it may be appropriate to arrange to meet with the witness, having given them a brief outline of your role. You can then make your request for the relevant documents during the meeting. It is important here that you explain what powers you have to obtain information. If in doubt, it may be prudent to seek legal advice on how to proceed.

The request for information is refused?

Remind the party of any legal obligation they have to provide information. While there may be a legal obligation on an individual or organisation to provide documents, enforcing such obligations is likely to involve time consuming and costly legal proceedings. It may be easier to see if there is another route to obtaining the same information.

Interviews

Your goal in interviewing is to obtain the most informed, reliable evidence possible. It is not to ambush or catch out interviewees. The following guidance on interviewing will assist you in achieving this.

Order of interviews

You will normally interview the subject member at the end of the investigation, when you have gathered all your evidence. This will give you the opportunity to put that evidence to the subject member and obtain their responses to it.

However, it could save time if you find out at the outset that the subject member admits part or all of the allegations. You could ask for an initial response to the allegations to establish this. This response could be provided orally or in writing.

You may decide to carry out consecutive interviews on the same day if you are concerned that witnesses may collude or use information provided to them. If you have already interviewed the subject member and complainant, you may wish to re-interview them near the end of the investigation. This may allow you to get them to agree facts. It also gives the interviewees an opportunity to comment on issues that have been raised during the course of the investigation. It provides an opportunity to present potential inconsistencies to the relevant parties for comment.

The format of the interview

It might be more appropriate to conduct face-to-face interviews than telephone interviews if:

- the matters involved are sensitive
- the interviewee is vulnerable you will need to refer to multiple documents during the interview
- the interviewee wishes to have a legal representative present
- the interview is with the subject member

It may be more appropriate to conduct a telephone interview if:

- there are significant resource implications, either in terms of cost or time in conducting a face-to-face interview
- the interview does not fall into one of the categories outlined above

If a subject member or witness insists on a face-to-face interview then serious consideration should be given to their request. You should specifically check that there is no medical or disability-related reason for their request. If there is, then you should conduct a face-to-face interview. If there is no medical or disability-related reason, then the decision is at your discretion. If you still wish to proceed with a telephone interview despite their request, then you should outline your decision in writing on the file. This is to show that it was both proportionate and reasonable.

Do not conduct joint interviews. It is important that each witness gives their own account without having their recollection influenced by hearing another person's account.

An interviewee may have a friend or adviser present. That person should not be someone who is a witness and they should be asked to keep the matters confidential. If an interviewee is a vulnerable person or a minor, you may wish to ensure that you are accompanied by another person.

The venue

If you are conducting a face-to-face interview try to ensure that the venue is:

- mutually convenient
- on neutral territory
- in a private room where you cannot be overheard
- a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or subject member
- safe for you, the investigating officer

(Occasionally it may be appropriate to conduct an interview at the home of the interviewee. This should generally be at the request of the interviewee.)

Information you must provide interviewees

You should provide the following information in writing to the interviewee:

- Confirmation of the agreed time, date and venue or that it is a telephone interview.
- Confirmation that the interview will be recorded, if appropriate.
- Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation. They should also not be a member of the standards committee or a council officer. Ask that they provide you with the name and status of their representative before the interview.
- The framework within which you are conducting the interview.
- How the information they give you in the interview may be used.
- The circumstances in which the information that they give you during the interview may be made public.
- The confidentiality requirements that they are under as an interviewee.

- Details and copies of any documents you may refer to during the interview.
- Your contact details if they have any questions or concerns before the interview

In the case of the subject member, details and copies of any evidence you have gathered and which you may refer to in your report. You do not have to disclose witness testimony prior to the interview, depending on the nature of that testimony and whether you want the interviewee's account prior to putting the witness's testimony to them. However, you may wish to disclose a witness's testimony during an interview once you have obtained the interviewee's own account. You could also consider providing an outline of the areas you intend to cover at interview.

If you only need to confirm one or two factual details with a council officer you may contact them by phone and do not need to forewarn them. However, when obtaining this information you should:

- orally outline all of the information you would otherwise have provided in writing as set out above
- check that they are happy to give it to you then, rather than at an agreed date in the future
- confirm the detail of information they do provide, in writing

Special circumstances

If an interviewee is disabled you should make reasonable provisions to cater for their specific needs.

If an interviewee is vulnerable or a minor, then they should always be accompanied by a third party at the interview.

Structuring an interview

Interviews should be planned in advance.

You can plan your questions using the following suggested format:

- Divide the information you require into discreet issues. For example, Issue 1:
- The planning meeting on date x; Issue 2: The planning meeting on date y.
- Make a note of the evidence you have already obtained about each issue.
- Note how you would briefly summarise the evidence to the interviewee.

Conducting the interview

All important interviews should be audio recorded where possible. The only exception is when the interview is likely to cover only a small number of factual matters. In this case, it may be more appropriate to resolve these factual matters in writing.

Before recording an interview you should:

- obtain the consent of the interviewee before you start recording the interview
- ask them to record their consent on the record once you have started the recording

- offer to send the interviewee a copy of the transcript or draft interview statement, whichever is applicable. If they ask, you can send them a copy of the recording too.

If you are concerned that the interviewee may share the transcript with other witnesses, you can delay sending the transcript or recording until you have completed all of your interviews.

The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering.

At the start of the interview

- 1)** When the interviewee arrives, try and put them at ease.
- 2)** Before you start the formal interview, inform the interviewee that there is a standard interview preamble that you must take them through. This ensures that any rapport you have established is unlikely to be lost when you take them through the framework of the interview.
- 3)** Confirm that the interview will be recorded and put the recording device in a visible place on the desk.
- 4)** With their permission start recording.
- 5)** Ask them to confirm for the record that they consent to the recording.
- 6)** Confirm for the record who you are, and the powers under which you are conducting the interview.
- 7)** State the date and time for the record.
- 8)** Confirm that they received your letter outlining the arrangements for the interview.
- 9)** Confirm that they read and understood your letter and ask if they have any questions about any of the information within it.
- 10)** If the interview is with the subject member, repeat orally all of the information contained in your letter.
- 11)** If the interviewee is at all unclear about anything, then repeat orally all of the information contained in your letter.
- 12)** Explain that they can take a break whenever they choose.
- 13)** Explain that you will offer them a break if the interview goes over an hour, even if they have not said that they want one.
- 14)** Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end.
- 15)** Explain that they can ask you to rephrase a question if they don't understand it.

During the interview

- 1)** Start the interview with the subject member with some background questions. These could include 'how long have you been a member', or 'what training have you had on the Code of Conduct?'
- 2)** Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question.
- 3)** Do not dart back and forth between different issues as you are liable to confuse yourself and the interviewee.
- 4)** Tackle one subject issue at a time.

- 5)** Ask open questions about information the interviewee or other witnesses have provided about the issue.
- 6)** Drill down. In other words, ask open questions about one specific issue until you have all the information you need on it.
- 7)** Where relevant ask the interviewee to reconcile differing accounts.
- 8)** Ask closed questions to confirm the information you have obtained about the specific issue.
- 9)** Move onto the next issue using the same method. Start with a broad open question about the subject, drill down for information with specific open questions. Conclude the area by asking closed questions to confirm what you have been told.
- 10)** If you are interviewing with someone else, the first interviewer should ask the open questions about each subject area. The second interviewer should then pick up on points to be clarified at the end of each subject area and ask closed questions to confirm what was said.
- 11)** Do not ask leading questions, for example, 'You said this to the clerk, didn't you?'.
- 12)** Do not ask the interviewee to speculate.
- 13)** Accurately put the evidence of other interviewees to the interviewee and ask for their response.
- 14)** When asked, explain the relevance of your question.
- 15)** Do not allow the interviewee's lawyer or representative to answer a question.
- 16)** You must allow the interviewee to stop and obtain advice whenever they choose.
- 17)** If the interviewee becomes upset or unwell you must offer them a break.
- 18)** Never raise your voice.
- 19)** Only interrupt if the interviewee is being unreasonable or is not providing relevant information.
- 20)** You should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then you should move on to another point or issue.
- 21)** Do not question the subject member about matters which fall outside the scope of the original allegation.
- 22)** If the interviewee wants a break, record the time of the break on the record and the time you resume the interview. Ask the interviewee to confirm for the record that you did not discuss anything about the case with them during the break.

Closing the interview

- 1)** State the time the interview finished.
- 2)** Thank the interviewee for their time and outline what will happen next.

After the interview

- 1)** Send the interviewee a copy of the transcript.
- 2)** State in the letter that if you do not hear from them by a specified date, you will assume the transcript is agreed.
- 3)** If the content of the transcript is disputed, check the discrepancies against the recording.

4) If the transcript is confirmed by the recording, write to the interviewee to inform them of this. In these circumstances, when the matter is referred to the standards committee, submit the transcript, the recording, the interviewee's letter outlining the dispute, and your response.

Evaluating the information

1) Review your investigation plan in light of the information gathered during the interview.

2) Review all the evidence you gather to determine if there are any gaps in it.

3) Take a view on all disputed relevant matters. Your own opinion on the evidence is sufficient. However, if you are unable to come to a decision, you may need to seek further information or decide that you are unable to reach a conclusion.

4) Weigh up all the evidence and decide if the alleged conduct occurred.

5) If you decide that the subject member acted as alleged, you will need to consider whether their conduct involved a failure to comply with the Code of Conduct.

6) If you decide the member breached the Code, consider whether you have evidence of any mitigating or aggravating circumstances. If not, you may need to seek further information.

Reports

Drafting the report

When you have concluded your investigation, you will need to write up your findings in a report to the standards committee. The report should contain the following information:

Title page

You must state:

- who the report is for
- who the report is by
- the date of the report

Executive summary

You must state:

- the full allegation and who it was made by
- the provisions of the Code of Conduct that were considered
- a conclusion as to whether there has been a failure to comply with the Code
- the finding

Member X's official details

You must state:

- when the member was elected
- the member's term of office
- any other relevant authorities they are a member of
- details of any committees on which the member serves or has served
- the date a member ceased to be a member, where relevant
- the date the member signed an undertaking to abide by the Code
- full details of any training the member has received on the Code

Relevant legislation and protocols

You must state:

- any relevant extracts from the Code
- any relevant extracts from any other legislation or protocols considered in the report

Evidence gathered and the investigator's consideration of it

When gathering and considering evidence

you may wish to follow this procedure:

- 1)** Start by summarising who you have obtained information from.
- 2)** Outline chronologically the facts that you have established.
- 3)** Set out undisputed facts as facts. Do not summarise them or preface them 'he said' or 'the minutes state'. If they are undisputed just state them as fact.
- 4)** Where there is a disputed fact, outline the different views and your conclusion on them. You need to form a conclusion based on the balance of probabilities.

Also state why you have reached this conclusion. For example:

- The clerk, Councillor Jones and Councillor Smith met at Councillor Jones's house on y date at x time.
- At interview the clerk stated that Councillor Jones said...
- At interview Councillor Smith stated that Councillor Jones told the clerk...
- At interview Councillor Jones stated that he told the clerk...
- I have considered the following issues when deciding what Councillor Jones said to the clerk...
- I consider that on the balance of probabilities Councillor Jones told the clerk...because...

5) Include all the relevant evidence you have gathered even if it does not support the conclusions you have reached.

6) Include any mitigating or aggravating factors, such as the state of mind of those involved.

7) When you refer in the report to material in the evidence bundle, identify the document referred to.

Summary of the material facts

Summarise the facts needed to confirm the conclusions you have reached.

Where there was a disputed fact, you will only need to include the conclusion you came to.

The subject member's additional submissions

Outline information or opinions submitted by the subject member, which you did not consider relevant to the case.

Outline why you do not deem information or opinions submitted by the subject member to be relevant.

Reasoning as to whether there has been a failure to comply with the Code of Conduct

- Take each alleged breach in turn.
- Outline which part of the Code of Conduct you are considering. Explain the test you are applying when determining if there has been a failure to comply with the Code.
- Explain in detail, giving reasons, why you do or do not consider that the conduct constitutes a breach of the Code.
- Do not introduce any new facts or opinions. You must only refer to evidence or opinions that have been outlined earlier in the report.
- Make sure your explanation of the test you are applying, and the reasons for your conclusions, are detailed and clear enough to understand for a lay person with no legal background.

Finding

You will need to make a finding about each alleged breach of the Code. Outline in detail the reason for your decision.

Refer to aggravating or mitigating facts, which must be outlined in the facts section earlier in the report.

Schedule

List the exhibits with the title **Schedule of evidence taken into account**. Exhibit all the evidence upon which you have relied when reaching your conclusion.

In complex cases it may be appropriate to provide a chronology. Provide a list of unused material.

Chronology

Where a case is complex it may be helpful to provide a chronology of important events in the case.

Who should I send the draft to?

You should issue a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. This is helpful if the report is complex or your conclusions are likely to be disputed by either party.

The draft should not be sent to other witnesses or parties interviewed, but you should seek confirmation of their evidence from them before issuing the report.

How should it look?

Ensure that the draft report is clearly marked as 'Draft'.

You must state that the report may be subject to change and does not represent your final conclusion.

If you have found the subject member in breach, you should send them copies of the evidence that you have relied upon when reaching this conclusion.

You must consider whether any of the information in the draft report, or evidence bundle, is confidential information that should not go into the public domain. For example, medical details or personal contact details. Information

of this nature should be edited from the draft and final report unless it is essential to the reasoning.

Send an accompanying letter stating:

- that the report is confidential
- that it can be discussed with a legal representative
- the date by which comments must be received

It is important to keep a copy of the draft and the bundle of evidence that you send to the subject member. This acts as a record of what information the member has received and prevents duplication of work when issuing the final bundle.

Comments on the draft

Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. Occasionally, responses may reveal a need for further investigation and may result in changes to the report. These changes may be significant enough for you to consider issuing a second draft.

Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.

Where comments on the draft are critical of the investigation or the investigator, you may need to consider how to respond to the complaints made. You should not let such criticisms prevent a draft report being finalised unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. The only exemption to this is in the circumstances listed in the section

Complaints about an investigation

A party may disagree with:

- the interpretation of the Code or other legislation
- the analysis of the evidence
- the analysis of an individual's conduct
- conclusions reached in an investigation
- the scope of the investigation
- how and who evidence was obtained from

These complaints will normally focus on the draft or final report. They will not usually criticise the actions of a specific individual. However, they may criticise an individual for reaching certain conclusions.

You should avoid getting drawn into lengthy correspondence with the subject member or other interested parties in this situation.

Comments received before the draft is issued

- If the comments are made by the subject member, then you should respond in writing.
- If the subject member does not understand either the Code or the investigative process, then you should seek to explain the position to them. Failure to do so may be taken into account at any subsequent hearing. However, you only need to show that you took all reasonable steps to address the subject member's confusion.
- If comments are made by the complainant or a third party, you can either respond to their comments or ask them to wait until they have read the draft report.

Comments received in response to the draft report

You should keep a written record of your consideration of any comments received on the draft.

It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report.

Add to the bundle of evidence any critical comments received on the draft.

Comments received after the final report has been issued

Write to the party explaining that the investigation is now closed and refer them to the person who is dealing with the standards committee hearing. Refer the party to the First-tier Tribunal if the matter has been referred to it.

Comments received after the hearing

Respond saying that the matter is now closed and no further correspondence will be entered into on the specifics of that case.

Complaints about the conduct of investigators should be dealt with in the same way as other service complaints.

The final report

Who should I send the final report to?

You must send it to:

the Monitoring Officer

the subject member

the Monitoring Officer of any other authority, other than a parish council, of which the subject member is a member, if requested

A copy may also be made available to the complainant and others as part of the hearing process.

How should it look?

You must state that the report represents your final finding and will be presented to the standards committee.

If you have found the subject member in breach you should send them copies of the evidence you have relied upon when reaching this conclusion.

You must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain.

For example, medical details, personal contact details or signatures. All information of this nature should be

edited from the final report unless it is essential to the reasoning.

Send an accompanying letter stating:

- that some aspects of the report are confidential
- that you have considered the comments they made in response to the draft report and
- have amended the final report where appropriate
- that it can be discussed with a legal representative

Producing & referencing the bundle of evidence

You should make two bundles. One of evidence used, which you will submit in full to the standards committee. The other should be a schedule of unused evidence. You may be required to submit documents from this bundle if they are requested by the standards committee or the subject member.

Contents of the evidence bundle

The evidence bundle will typically include:

a) Documents which establish the legal framework for the investigation such as:

- the complaint letter
- the authority's Code of Conduct
- a copy of any legislation referred to in the report
- a copy of the subject member's declaration of acceptance of office

b) Any document upon which you have relied when reaching your decision, such as:

- transcripts, interview records or interview statements with all relevant parties and interviewees written correspondence from the subject member on substantive matters, including comments they made on the draft report
- minutes, reports and other documentary evidence upon which you have relied when reaching your conclusion as to the facts

c) Any document which would assist in the subject member's defence, such as:

- any document that the subject member may seek to rely on in their defence of the conclusions reached
- documents which contain information that is inconsistent with the facts as established by the investigation
- documents which raise questions about the accuracy of any of the evidence, including the reliability of witnesses
- documents containing information which could lead to a finding that the standards committee or investigator has acted in breach of the subject member's rights under the Human Rights Act 1998
- documents which provide an explanation or partial explanation of the subject member's actions

d) Background documents. These are documents which you did not rely upon when reaching your decision, but which may be helpful to the standards committee when considering the case.

They should also include documents that the subject member thinks are relevant but which are not, in your opinion, material to the case.

e) A list of unused evidence. This is a list of the documents that you believe are irrelevant to the investigation.

f) You should provide sufficient detail about each item so that the standards committee or subject member can request it if they wish.

g) You do not need to prepare a bundle of the unused evidence.

You do **not** need to disclose:

a) Sensitive information which you have edited or deleted.

b) Information protected by legal professional privilege and public interest immunity.

c) Internal documents such as file notes and draft reports. However, these may be requested by the standards committee, so it is important to be sure that these are precise and clear.

Note: Please ensure that you disclose documents that may be relevant to the case or to the subject member's defence. This is because failure to disclose such documents may result in the standards committee reaching an inappropriate decision, and the decision being deemed unsafe upon appeal.

Structure of the evidence bundle

- The bundle should begin with the documents which establish the framework for the investigation.
- The remaining evidence should then be grouped thematically, for example policy documents or minutes.
- Arrange the documents chronologically within their group.
- The front page of the bundle should be numbered 000001, with each subsequent page numbered in ascending order.
- If a document is missing, you should provide a note to this effect to the standards committee outlining the reasons why the document is unavailable.
- Only include multiple versions of a document if it is important to do so for the evidence.

Editing the evidence bundle

The information that should be deleted from the bundle will depend on the circumstances of the case. Information should be deleted on the basis that it may end up in the public domain. You should consider whether to remove a telephone number, address, email address, or signature of any person other than on a transcript or witness statement. This is personal data as defined by the Data Protection Act 1998. While the standards committee may need witness contact details, these should still be deleted from any documents and provided as a separate list to the standards committee age and date of birth of

a party (unless directly relevant to the case) any information which relates to matters which were not referred for investigation other personal data as defined by the Data Protection Act 1998 Items such as petitions, legal advice and the evidence of vulnerable people need to be deleted on a case-by-case basis. If in doubt seek legal advice.

Confidentiality

The legal position

Section 63 of the Local Government Act 2000 as amended, limits the circumstances where information obtained by an officer during an investigation can be disclosed. Any person who discloses information in breach of Section 63 is guilty of a criminal offence. The legal parameters are as follows.

You should not disclose information obtained in an investigation unless:

- the disclosure will assist ethical standards officers to perform their statutory functions
- the disclosure will assist the monitoring officer or standards committee to perform their statutory functions
- the person who the information relates to gives you permission to disclose it
- the information has already lawfully been made public
- the disclosure is made for the purposes of criminal proceedings in the UK
- you are required to do so by a court or other similar body
- the disclosure is to one of the public bodies listed in Section 63(1) of the Local Government Act 2000 for the purpose of their functions

Any draft report that you issue on the outcome of the investigation should be marked as confidential. This is to preserve the integrity of any further investigation that you may need to undertake.

Confidentiality in practice

In some circumstances, maintaining the confidentiality of an investigation can be difficult. However, it is important that you take all reasonable steps to maintain the confidentiality of your investigation, as failure to do so may compromise the integrity of your investigation.

Here are some practical steps for maintaining confidentiality:

- Mark all of your letters, transcripts and reports as confidential.
- Outline the legal restrictions on the disclosure of information in any letter that you send. However, you must clearly inform members in writing that they can appoint a solicitor, or other person, to act as their representative.
- You must also clearly inform them that they can disclose any relevant document to this representative.
- You should state that their representative should not be someone who may be involved in the investigation.
- It is important that you make it clear to all parties that they should make any approach to witnesses in writing. This is to avoid confusion that might arise about the investigative process.

- When arranging interviews ask interviewees to identify the name of any person who is accompanying them to the interview. Also ask them to state what their relationship is to the interviewee. You should explicitly state, in writing, that they should not be accompanied by anyone who may be called as a witness in the investigation.
- If you think it is possible that witnesses may discuss their testimonies with each other, you should not send the transcripts of any interviews until all of the interviews have been concluded. This may mean that you send interview transcripts out with the draft report.
- Where you are interviewing a number of people who have close relationships with one another, it may be prudent to interview them immediately after each other. This reduces any opportunity for collaboration.

What to do if confidentiality is breached

Write to the party reminding them of the confidentiality requirements and, if they are a member, of their duties under the Code of Conduct.

If you have evidence that information was disclosed to a party prior to their interview, you can take this into account when evaluating the reliability of the witness's evidence.

If the disclosure was made by a member you can consider making a formal complaint about their conduct. If you consider that the disclosure was substantial you may want to take legal advice on whether to refer the matter to the police.

Complaints about an investigation

It is important that there is a clear documented procedure for considering complaints about the investigation. The procedure should fall into two discrete stages. First an evaluation of the nature of the complaint, and second, what action should be taken to handle the complaint.

Evaluating complaints

There are two types of complaints:

- Complaints about the conduct of the investigation (service complaints).
- Complaints about the interpretation and reasoning in the investigator's report.
- Service complaints occur when a party criticises the actions of an investigator.
- Such criticisms may include: administrative errors, for example misspelling a name; failure to communicate; criticism of the manner in which the investigator behaved; or criticism of the length of time it took to conclude the investigation

The procedure for handling service complaints

You will already have a procedure for processing service complaints generally. You should consider whether to use this procedure when dealing with service

complaints about an investigation. The procedure may include the following provisions:

- An agreement that investigators will explain to parties making a complaint that there is an independent service complaints procedure that they can use.
- That the complaint will be acknowledged by someone other than the investigator within an agreed time frame.
- That the complaint should be considered by someone independent of the investigation.
- That a written response will be provided within an agreed time frame.
- An agreed appeals process which should be clearly communicated to the complainant.

Once the complainant has gone through the agreed appeals process, it is reasonable to state that no further communication will be entered into. The complainant is then also free to take the matter up with the Local Government Ombudsman.

The investigation can continue while a service complaint is being addressed. However, there may be circumstances where the complaint is so substantive that it would not be appropriate for the same investigating officer to continue on the case while the service complaint is ongoing. Such circumstances should be very rare.

An investigation into a service complaint should not postpone the conduct of the main investigation.

Handling mixed complaints

It is not uncommon for complainants to mix comments on interpretive matters with service complaints. In such cases, you should write to the complainant outlining which matters will be considered by your service complaints process, and which matters are differences of interpretation which will not be considered as part of the complaint.

Hearing Procedure

This guidance is designed to help members and officers who are involved in the determination of complaints that a member may have breached the Code of Conduct

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.

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.

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.

On completion of an investigation the monitoring officer must make one of the following decisions based on the investigating officers report and in consultation with one of the Council Independent Persons:

- The matter can be resolved via local resolution
- There has been a failure to comply with the Code and a hearing is required.
- There has not been a failure to comply with the Code.

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.

When assessing whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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 is sent a copy of the report from the monitoring officer.

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.

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.

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.

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 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

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.

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 nonlegal representative, the subject member must obtain the consent of the standards committee.

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

Evidence

The standards committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. In many cases, the standards committee may not need to consider any evidence other than the investigation report or the ethical standards officer's report, and any other supporting documents.

However, the standards committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

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

Witnesses

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

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:

The Hearing Panel may issue sanctions that are relevant and proportionate to the matter from within the options listed below:

- Publish its findings in respect of the member's conduct; Report its findings to Council or to the Parish/Town Council for information;
- Recommend to the member's Group Leader (or in the case of un-grouped members and Group Leaders, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the member be removed from the executive, or removed from particular Portfolio responsibilities, or if it is the Leader of the Executive, make recommendations to Council;
- Instruct the Monitoring Officer to or recommend that the Parish/Town Council arrange training for the member;
- Remove or recommend to the Parish/Town Council that the member be removed from all outside appointments to which they have been appointed/nominated by the authority or by the Parish/Town Council;
- Withdraw or recommend to the Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- Exclude or recommend that the Parish/Town Council exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- Require the member to apologise to the Council, in a meeting of the Full Council, including an explanation for their action;
- When a member is asked to undertake training they will be asked to contribute half of the training cost to that authority;

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' basic or special responsibility allowances.

Considering the sanction

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

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

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

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

In deciding what action to take, the Committee 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 Committee should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Committees 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.

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 will 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 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
- 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 in line with access to information regulations.

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:

- 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
- 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
- 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.

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; and 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.

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.

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
 - 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
 - iv) can attend the hearing on the proposed date
 - v) want any part of the hearing to be held in private
 - vi) want any part of the investigation report or other relevant documents to be withheld from the public
- send a copy of the subject member's response to the monitoring officer to say by a set time whether they want:
 - i) to be represented at the hearing
 - ii) to call relevant witnesses to give evidence to the standards committee
 - iii) any part of the hearing to be held in private
 - iv) any part of the investigation report or other relevant documents to be withheld from the public
 - v) to invite any other witnesses the committee feels are appropriate

The Chair of the committee, in consultation with the legal adviser to the committee, should then:

- confirm a date, time and place for the hearing
- confirm the main facts of the case that are agreed
- confirm the main facts which are not agreed
- confirm which witnesses will give evidence
- outline the proposed procedure for the hearing
- provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing

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.

The Hearing Panel may issue sanctions that are relevant and proportionate to the matter from within the options listed below:

- Publish its findings in respect of the member's conduct; Report its findings to Council or to the Parish/Town Council for information;
- Recommend to the member's Group Leader (or in the case of un-grouped members and Group Leaders, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the member be removed from the executive, or removed from particular Portfolio responsibilities, or if it is the Leader of the Executive, make recommendations to Council;

- Instruct the Monitoring Officer to or recommend that the Parish/Town Council arrange training for the member;
- Remove or recommend to the Parish/Town Council that the member be removed from all outside appointments to which they have been appointed/nominated by the authority or by the Parish/Town Council;
- Withdraw or recommend to the Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- Exclude or recommend that the Parish/Town Council exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- Require the member to apologise to the Council, in a meeting of the Full Council, including and explanation for their action;
- When a member is asked to undertake training they will be asked to contribute half of the training cost to that authority;

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' basic or special responsibility allowances.

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
- 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 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

Hearing procedures for the standards committee

The hearing procedures below aim to give standards committees a consistent approach to determining matters locally.

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.

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.

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
- 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.

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

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.