



# STANDARDS COMMITTEE

## — Agenda —

**WEDNESDAY  
30 JULY 2003**

**7.00 PM**

**COMMITTEE ROOM 4  
HAMMERSMITH  
TOWN HALL  
LONDON W6 9JU**

### **Membership**

Mr. Steven Moussavi (Chair)  
Mr. Christopher Troke  
Ms. Rafela Fitzhugh  
Councillor Colin Aherne  
Councillor Chris Allen  
Councillor Nicholas Botterill

If you require further information relating to this agenda please contact the Co-ordinator:

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# STANDARDS COMMITTEE

## —Agenda—

30 JULY 2003

<u>ITEM</u>		<u>PAGE</u>
1.	<b>ELECTION OF CHAIR FOR THE 2003/04 MUNICIPAL YEAR</b>	
1.1	By agreement, the Chair of the Committee rotates among the independent members of the Committee each Municipal year. It was proposed this time last year that Mr. Troke should succeed Mr. Moussavi, for the Municipal Year 2003/4. The Committee's agreement to this is sought.	
2.	<b>APOLOGIES FOR ABSENCE</b>	
3.	<b>MINUTES – 31 MARCH 2003</b>	3 – 6
3.1	To confirm and sign the Minutes of the meeting held on 31 March 2003 as an accurate record.	
4.	<b>DECLARATION OF INTERESTS</b>	
4.1	If a Councillor has any prejudicial or personal interests in a particular report, they should declare an interest.	
4.2	A Councillor should not take part in the discussion or vote on a matter in which they have a prejudicial interest. They should withdraw from the meeting while the matter is under discussion unless the disability to discuss the matter has been removed by the Standards Committee.	
5.	<b>2<sup>nd</sup> NATIONAL ASSEMBLY OF STANDARDS COMMITTEES CONFERENCE – BIRMINGHAM - 9/10 JUNE 2003.</b>	(Oral report)
5.1	To receive feedback from the Conference (Cllr.Allen).	
6.	<b>LOCAL INVESTIGATION &amp; DETERMINATION OF MISCONDUCT ALLEGATIONS – RESPONSE TO ODPM CONSULTATION EXERCISE ( 9 JUNE 2003)</b>	7 – 13
6.1	To receive the results of the consultation exercise undertaken by ODPM into the local investigation and determination of misconduct allegations by Local Authorities, and to note the conclusions reached by the Government on the matter, which has informed the framing of the s.66 legislation. (items 7 & 8 below refer ODPM response to Consultation exercise	

- 7. THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2003 & ODPM CONSULTATION ON THE PROVISION OF INDEMNITIES TO MEMBERS/OFFICERS IN CODE OF CONDUCT CASES** 14 – 48
- 7.1 To receive a report from the Head of Legal Services (Deputy Monitoring Officer) on the operation of new Regulations governing the local determination of misconduct allegations.
- 7.2 To receive the ODPM Consultation paper on the provision of indemnities to members/ officers in Code of Conduct cases, and to formulate the Committee's response to the questions posed by the Government in relation to this matter.
- [Appendix A](#) – The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003
- [Appendix B](#) – ODPM Consultation paper on indemnities for members/officers in misconduct cases
- 8. STANDARDS COMMITTEE DETERMINATIONS – GUIDANCE FOR MONITORING OFFICERS & STANDARDS COMMITTEES** 49 – 97
- 8.1 To receive and note the detailed Guidance issued by the Standards Board for England to Monitoring Officers & Standards Committees on the procedures for the holding of hearings to determine misconduct allegations.
- Standards Board for England Guidance for Monitoring Officers/Standards Committees (July 2003)
- 9. REVISED GUIDANCE FOR MEMBERS ON REGISTERING & DECLARING INTERESTS, GIFTS & HOSPITALITY** 98 – 112
- 9.1 To note the revised Guidance for Members issued by the Standards Board for England.
- Standards Board for England Revised Guidance on registering & declaring interests, etc.

jpc/22/07/03

# STANDARDS COMMITTEE

## —Minutes—

**31 MARCH 2003**

Present:

Mr. Steven Moussavi (Chair)  
Ms. Rafela Fitzhugh  
Councillor Colin Aherne  
Councillor Chris Allen  
Councillor Nicholas Botterill

<b>ITEM</b>	<b>ACTION BY</b>
Item 1 <u>ELECTION OF CHAIR</u>  N/A	PAD/RL to note for Minutes
Item 2 <u>APOLOGIES FOR ABSENCE</u>  <u>Mr Christopher Troke</u>	PAD/RL to note for Minutes
Item 3 <u>MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE HELD ON 8 JULY 2002</u>	PAD/RL to note for minutes

### Matters arising on the Minutes

Councillor Allen pointed out that, in relation to minute 8.2, he had not declared a personal interest as stated in the minute. He had instead explained his position (as set out fully in Appendix 1 to the Minutes) in relation to the Standards Committee grant of dispensation regarding the item on the agenda of the Planning Applications Committee.

Councillor Botterill asked that his disagreement with the way in which the issue had been dealt with at PAC be recorded. He had recommended lowering the quorum, which would have enabled the remaining Opposition members (who were all in favour of granting planning permission) to vote on the matter rather than the meeting being inquorate.

In relation to minute 8.4, it was noted that the existence of any objections to the planning application would have had no bearing whatsoever on the Standards Committee's dealing with the question of grant of dispensation .

RESOLVED - Subject to the above, to agree and sign the minutes as an accurate record of the proceedings.

Item 4 .DECLARATIONS OF INTEREST

PAD/RL to note for minutes (if any)

None

Item 5 UPDATE OF LOCAL PROTOCOL – USE OF COUNCILLORS' SECRETARIAT.

Henry Peterson, as Monitoring Officer, introduced the report, which had arisen as a result of the District Auditor's (DA) recommendation that further clarification be made on the issue of Councillors' use of bulk-mail out facilities, set out in the Local Protocol adopted by the Authority in May 2002. The DA had suggested three additional measures be made to the Council's Local Protocol on bulk mail-out's, as detailed in paragraph 1.3 of the Standards Committee report.

Following discussion, the Committee agreed to accept the DA's recommendations 2 & 3, and to amend the existing Local Protocol accordingly, subject to the following minor change:

In recommendation 3, the text to be amended to read:

*"Council resources should be used for their proper purposes - i.e their use should relate to a Councillor's existing duties or role as a Ward Councillor, in which role they should not be used to communicate with constituents of another ward ."*

HP to advise District Audit.

The Committee had some difficulty defining what was meant by "...the actual start of electioneering .." in recommendation 1, as this differed greatly between Local and General elections. It was eventually agreed that the existing Local Protocol wording be amended to read:

JPC to note & action for Constitution

*"...no bulk mail-outs will be permitted from the start of the official election period (normally 6 weeks in the case of a Local Election) without the prior authorisation of the Monitoring Officer as to its legitimate use."*

The Committee also noted that, if it was necessary, Councillors could communicate with their electorate through a senior officer – e.g. the Managing Director - in order to avoid possible accusations of abuse of the facility during such times.

Item 6 2ND ASSEMBLY OF STANDARDS COMMITTEES - ANNUAL CONFERENCE, BIRMINGHAM, 9-10 JUNE 2003.

RESOLVED: That Councillor Chris Allen be nominated to attend as the Council's delegate. (Noted that Mr Moussavi also expressed an interest in attending, conditional on the Section 66 Regulations being published by that time.)

JPC to note & action

Item 7 "TALK BACK, LOOK FORWARD" - THE STANDARDS BOARD ROADSHOW, 21 JANUARY 2003 – FEEDBACK

The Committee received feed-back from Henry Peterson and Mr.Moussavi on the Standards Board for England's Roadshow, which had been held at Kensington Town Hall on 21 January. It was noted that most of the complaints received and investigated to date had related to Parish Councils, rather than Borough, District or County Council level.

Councillor Aherne expressed serious reservations about the Standards Board's suggestion of actively publicising the outcome of cases with the local Press at an early stage. It was his view that even an accusation which was later refuted or dismissed could seriously compromise a councillor's reputation, and that all cases should be treated as if sub-judice until all possible avenues of appeal had been exhausted. He suggested that , unless it was made a specific duty under the new s.66 regulations, the LBHF Standards Committee make its own determination to reject that part of the SBE Guidance.

HP to action.  
(Copy of letter to be sent to all STC members)

HP, as Monitoring Officer, undertook to raise the issue with Standards Board, expressing the above concern

Item 8 GUIDANCE FOR MEMBERS ON INVESTIGATIONS REFERRED TO THE STANDARDS BOARD FOR ENGLAND.

Noted the Guidance issued by the Standards Board on the process of conducting an investigation which had been referred to it.

Members expressed some concern over the power of an ESO to fine, not just Councillors, but also third parties, who failed to attend for interview or provide information "without reasonable excuse".

Item 9 RE: THE CASE OF COUNCILLOR GARNER / KINGS LANGLEY PARISH COUNCIL (FAILURE TO REGISTER INTERESTS) 16 JANUARY 2003

Noted the report of the Adjudication Panel for England into the case of Cllr.Garner, Kings Langley Parish Council. The case

was the first case of its kind where the Standards Board and the Adjudication Panel for England had used their powers to recommend and implement disqualification from office (in this case one year) for failing to adhere to the written undertaking given on the statutory Councillors' Code of Conduct.

Meeting Ended: 8.15pm

Chair.....

RL/4/4/03

## **STANDARDS COMMITTEE**

**30 JULY 2003**

**CONTRIBUTORS**  
**(PAD)**

**Local Investigation & Determination of  
misconduct allegations – published  
response to ODPM Consultation exercise**

**WARDS**  
**All**

This report sets out in summary form the responses received from local authorities by the Office of the Deputy Prime Minister (ODPM) to its consultation paper issued in May 2002 as to how allegations of Councillor misconduct and breaches of the statutory Code of Conduct should be dealt with at local level. Over 1,000 replies were received by ODPM to the consultation exercise.

The ODPM summary attached sets out how the Government intends to respond to the concerns raised by local authorities' arising from the consultation, and also indicates the framework under which new legislation will govern these proceedings, both by the issue of statutory Regulations (item 7 of this Agenda refers), and by further amendments to the Local Government Act 2000 included in the Local Government Bill currently before Parliament.

### **RECOMMENDATION:**

- 1. That the Committee note the summary of published responses to the ODPM consultation exercise.**

jpc/16/07/03



## **Local investigation and determination of misconduct allegations: response**

### **About this Summary**

In May 2002 the Government held a consultation exercise, seeking views on how allegations of councillor misconduct should be handled at local level. More than 1,000 responses to the consultation were received. The main messages from those responses are summarised here.

The Government has now made regulations on the procedures to be followed by standards committees when considering allegations of misconduct. In addition, amendments to the Local Government Act 2000 have been proposed and are included in the Local Government Bill currently before Parliament. If those amendments are passed, the Government intends to make further regulations on the procedures to be followed when allegations of misconduct are investigated locally.

### **1. Introduction**

Part III of the Local Government Act 2000 introduced a new ethical framework for local government. Under the framework, all relevant authorities are required to adopt codes of conduct. The codes set out standards of conduct that all members of the authority should follow.

Allegations about breaches of the codes may be made to the Standards Board for England. If the Standards Board decides to instigate an investigation, it is passed to an Ethical Standards Officer (ESO). The ESO's investigation will determine that:

- (a) there is no evidence of any failure to comply with the code; or
- (b) no action needs to be taken; or
- (c) the matter should be referred to the monitoring officer of the relevant authority; or
- (d) the matter should be referred to the Adjudication Panel for England.

Section 66 of the Act provides for the Secretary of State to make regulations regarding the way monitoring officers deal with a matter referred to them by an ESO.

### **2. The Consultation Exercise**

In May 2002, the Office of the Deputy Prime Minister (then the Department for Transport, Local Government and the Regions) published a consultation paper *Conduct of councillors: local investigation and determination of misconduct allegations*. The paper sought views on the Government's proposals for the Section 66 Regulations.

Copies of the paper were sent to all principal local authorities in England, to fire authorities, national parks and other joint bodies, parish and town councils, to police authorities in England and Wales, and to various representative organisations including the Local Government Association.

Copies were also sent to a range of bodies, including academic institutions, with an interest in the issues.

In total 1,081 responses were received. The table below shows the number of responses from different categories of respondent.

Respondent	No. of responses received
County Councils	29
District Councils	193
London Boroughs	21
Metropolitan Borough Councils	23
Parish and Town Councils	695
Unitary Authorities	20
Joint Authorities	45
Associations	20
Individuals	35

### **3.Changes made to the proposals as a result of consultation**

Responses to the consultation paper raised a number of important issues. The regulations now being introduced have benefited considerably from the comments received and the Government is grateful to all of the respondees for their contributions. The changes are listed in reference to the steps of the proposed framework set out in the consultation paper.

#### **3.1 Step 1: a member or officer of the relevant authority or member of the public, thinks there may be reason to believe that a member of the authority has breached the Code of Conduct**

This section of the consultation paper prompted responses covering two broad issues: the role of the monitoring officer and the handling of allegations received by an authority.

##### **Monitoring Officers**

It was pointed out by many respondents that the different roles of monitoring officers could give rise to conflicts of interest.

The monitoring officer may potentially fulfil many roles:

- advising a complainant of the various avenues for complaint
- investigating the complaint
- advising the standards committee and
- advising members of the authority regarding their duties under the code of conduct

Under the proposals in the consultation paper, these different roles could be difficult to reconcile. For example, having given advice to a member on a proposed course of action, it would be difficult for the monitoring officer to investigate an allegation relating to that action, or to advise the standards committee in a determination of the allegation.

In order to overcome these difficulties, the Government has decided that the monitoring officer must be allowed to nominate another person to conduct investigations or to carry out other functions set out in Part III of the Local Government Act 2000. To achieve this, amendments to the

2000 Act have been included in the Local Government Bill which is currently before Parliament. If those amendments are accepted, then it is the Government's intention that regulations will be made concerning the investigation of allegations at local level. In the meantime, a first set of regulations is being made concerning the consideration by standards committees of allegations which have been investigated by an ESO.

### **Complaints received by Local Authorities**

The consultation paper proposed a process by which any allegations of misconduct sent to a local authority should be sent to the Standards Board for consideration. While many respondents agreed with the aims of this process (especially the need to ensure fairness and consistency), a majority of respondents felt that the proposed procedure was cumbersome and unworkable. Concerns were also expressed about the proper role of the authority, and whether there should in principle (and in law) be a requirement to send allegations to the Standards Board.

Having considered these responses, the Government is proposing a different approach. The regulations will not include specific new requirements on authorities to send allegations to the Standards Board. However, the Government's view remains that the Standards Board should have a central role in the handling of allegations. The code of conduct itself requires that members should notify the Standards Board of any conduct by another member which they reasonably believe involves a failure to comply with the code.

### **3.2 Step 2: After a formal allegation has been made that the Code has been breached**

Many respondents believed strongly that a member should always be informed immediately that an allegation had been made against them. As a general point the Government agrees that members should be informed as soon as possible, although recognising that there may be exceptional circumstances (for example if the person making the complaint is thought to be especially vulnerable) where informing the member may not be right. This is an issue to which the Standards Board have given careful consideration regarding allegations made to them, and to which the Government will give careful thought before regulations are made concerning the conduct of local investigations.

### **3.3 Step 3: Investigation**

The consultation paper put forward proposals concerning how monitoring officers should conduct investigations. Many responses were received commenting on the proposed powers of the monitoring officer, and on the proposed conclusions of the investigation.

#### **Powers of the monitoring officer**

Many respondents considered that the powers of the monitoring officer to investigate an alleged breach of the code were insufficient. It was argued that monitoring officers should either:

- have the same powers as an ESO to obtain evidence, with the threat of criminal sanctions for the failure to do so; or
- be able to refer a matter back to the ESO where persons were not co-operating with the monitoring officer in providing evidence or if for any other reason it was more appropriate.

#### **Conclusions of the monitoring officer**

A number of respondents commented that the proposed conclusions for a monitoring officer to reach were not appropriate. The finding no evidence of any failure to comply with the code of conduct did not confirm the innocence of the member. The finding that the code of conduct has been breached was objected to on the basis that it was a decision for the standards committee to make, rather than the monitoring officer.

These comments will be considered very carefully as the Government prepares regulations which it intends should be made later this year, if the amendments to the 2000 Act are accepted.

### **3.4 Step 4: Determination of the allegation**

Responses relating to this section of the consultation concentrated on the publicity surrounding standards committee hearings, the composition of standards committees when hearing cases, and the sanctions available in the event of a breach of the code.

#### **Publicity**

A large number of respondents questioned whether standards committee hearings should be held in public. A number of respondents were concerned about the interaction with the access to information provisions in Part VA of the Local Government Act 1972.

The Government believes that it is important for standards committees normally to conduct their hearings in public, so that local people can have the opportunity to see that allegations are being considered in a fair and open way. However there may be exceptional cases where hearings, or papers relating to hearings, should be kept confidential and it should normally be the case that deliberations of the committee are in private. The regulations concerning determination provide scope for standards committees to decide themselves (within the framework of Part VA of the Local Government Act 1972) when their meetings should be confidential.

#### **Composition of Standards committees**

A large proportion of respondents objected to further regulation of the composition and procedures of standards committees. The restriction of numbers to a maximum of 5 and the proposal that the independent member should chair the committee and choose the members of the committee were the subject of most objections.

The Government has considered these comments and concluded that the composition and size of standards committees when determining misconduct allegations should be determined by standards committees, taking account of local circumstances, and should not be prescribed in regulations. It is expected that guidance to be issued by the Standards Board will address this matter. In addition, the Government has put forward amendments to the Local Government Act 2000 which will allow standards committees to establish a wider range of sub-committees and so provide greater flexibility for the conduct of hearings.

#### **Sanctions**

Some respondents objected to the standards committee having the power to suspend members, arguing that this was a sanction that should only be imposed by the Standards Board. Many parish and town councils objected to standards committees of principal councils determining allegations and argued that the Standards Board should consider all allegations.

There was a broad range of views and in the Governments view a careful balance needs to be struck. After consideration, the Government has decided that standards committees should be able to impose a maximum penalty of 3 months suspension.

A number of respondents also suggested that standards committees should be able to impose a broader range of sanctions, and that they should have the discretion to impose a combination of sanctions (for example, censure and suspension). A combination of sanctions is provided for in the regulations.

### **3.5 Step 5: Appeal**

#### **Costs**

Many respondents felt it was unfair that a member should bear all the costs of defence even when found not to have breached the code. Some respondents advocated that the relevant authority should indemnify members for these costs, while others advocated an award of costs against the complainant. The issue of costs was often linked to a general opinion that the framework does not do enough to protect the interests of members, particularly against malicious, vexatious and groundless complaints.

The Government has considered these issues very carefully. While there is general support for the proposals regarding appeals and representations, the issues around costs are more difficult. It is essential that the procedures for investigating allegations and for standards committee hearings do not become so cumbersome or intimidating that members feel that it is always necessary to rely on expensive legal advice. Equally, it is understandable that councillors will be concerned to defend themselves.

Having considered the issues, the regulations provide no powers for standards committees or appeals panels to award costs.

### **3.6 Other issues**

#### **Timeliness**

Many respondents expressed concern that complaints against a member of a relevant authority should be dealt with quickly. The regulations provide that the standards committee must consider a report of an ESO within 3 months of receipt of the report by the monitoring officer.

#### **Police Authorities in Wales**

The Government is conscious of the special position of Police Authorities in Wales under the new ethical framework. While these authorities are subject to the English code and guidance, they are in some circumstances subject to Welsh local government regulation, and the Local Commissioner in Wales will investigate allegations of misconduct in Welsh police authorities. We have consulted with the Local Commissioner in Wales, the Association of Police Authorities and Police Authorities in Wales to ensure that the regulations work effectively for these authorities.

#### **Parish Councils**

A large number of responses were received from parish councils and individual parish councillors. Many of these contained comments on the wider issues of the application of the code of conduct and the operation of the Standards Board. These comments, though not immediately relevant to the specific consultation exercise, have been carefully considered. In addition, as noted above, many parish councils are concerned about the proposal that standards committees of principal authorities should have a role in determining allegations about parish councils.

While recognising these concerns, the Government nevertheless believes it is important to have a local mechanism for considering misconduct allegations relating to parish councillors. It is not reasonable to expect that every parish council should have a standards committee. Provision has been made in the Local Government Act 2000 for parish members to be appointed to standards committees, and to require that a parish member is present when parish matters are considered. With these safeguards, the Government believes that the proposals for handling allegations relating to parish councillors should be workable and fair.

#### **4.Next Steps**

The Government is grateful to all those who responded to the May 2002 consultation. The great majority of those responses were thoughtful and well-informed, and they have helped the Government to refine and improve the proposed framework.

As noted above, regulations are now being made concerning the local determination of misconduct allegations, following investigations by an ESO. The Standards Board is preparing guidance to support standards committees in the operation of these regulations.

Further regulations will be needed to provide for the local conduct of investigations, by monitoring officers or other persons nominated by the monitoring officer. Before making such regulations, the Government intends to amend the 2000 Act to allow monitoring officers to nominate persons to carry out those investigations.

Any comments on this summary can be sent to:

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## **STANDARDS COMMITTEE**

**30 JULY 2003**

**CONTRIBUTORS**

**HLS(PAD)**

**The Local Authorities (Code of Conduct)  
(Local Determination) Regulations 2003  
& ODPM Consultation on indemnities for  
Members in Code of Conduct investigations**

**WARDS**

**All**

This report explains how the new provisions for local determination of complaints against members, which came into force on 30 June 2003, will operate; sets out the new powers of Ethical Standards Officers to refer complaints to Monitoring Officers to be determined by local Standards Committees; and sets out the new powers given to the authority's Standards Committee. It also considers the recent ODPM consultation paper on the provision of indemnities and insurance for members/officers in Code of Conduct investigations.

**RECOMMENDATIONS:**

- 1. That the new Regulations be noted.**
- 2. That the Standards Committee receive a further report on the procedure to be adopted once guidance has been issued by the Standards Board for England.**
- 3. That the Standards Committee comment on the current ODPM proposals in respect of indemnities in Code of Conduct cases.**

## **1. INTRODUCTION**

- 1.1 This report explains how the new provisions for local determination of complaints against members that come into force on 30<sup>th</sup> June 2003 will operate. These provisions are contained in the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 which appear at **Appendix A** (“the Regulations”).
- 1.2 The Local Government Act 2000 established a new ethical framework for members of local authorities overseen by the Standards Board for England. All members and co-opted members are governed by the Council’s Code of Conduct. Alleged breaches of the Code are investigated by Ethical Standards Officers (“ESO”) working for the Standards Board. ESO’s have the power to refer cases to an Adjudication Panel whose case tribunals have powers to suspend or disqualify members.
- 1.3 Where an ESO conducts an investigation into an allegation of misconduct he or she may make one of four findings:-
1. That there is no evidence of a breach of the Code of Conduct.
  2. That no further action is necessary.
  3. That the matter should be referred to the Council’s Monitoring Officer for investigation.
  4. That the matter should be referred to the Adjudication Panel for investigation.

The Regulations are now in force and govern how the Council must deal with matters referred to the Monitoring Officer by ESOs.

## **2. REPORTS AND HEARINGS**

- 2.1 Where an ESO refers a matter to the Monitoring Officer s/he must: -
- (a) Send the member concerned a copy of the ESO’s report; and
  - (b) Arrange for the Standards Committee to meet to consider the report.
- 2.2 The Standards Committee must convene to conduct an investigation. The Standards Committee may conduct the hearing using such procedures as it considers appropriate but must have regard to any guidance issued by the Standards Board.
- 2.3 The hearing must be held within 3 months from the date on which the Monitoring Officer received the report and at least 14 days after s/he sent the report to the member who is the subject of the hearing unless the member agrees to a shorter period.
- 2.4 If a member fails to attend the hearing the Standards Committee may unless there is a good reason for non-attendance determine the matter in the member’s absence or adjourn the hearing to another date.



### **3. RIGHTS OF MEMBERS**

- 3.1 The member is given an opportunity to present evidence in support of his/her case and may make representations orally or in writing and has a right to be represented by a solicitor or a barrister at their own expense (proposals to allow the Council to give an indemnity in certain circumstances are discussed below). A member may be represented by another person with the prior consent of the Standards Committee. A member may call witnesses but the Standards Committee may place a limit if it considers the number of witnesses a member proposes to call is unreasonable. There are no provisions for costs.
- 3.2 The Access to Information Rules are amended by the addition of four extra categories of exempt information when considering such reports. These are:-
- Personal Information relating to any person (e.g. a member)
  - Confidential Information
  - Interests of national security
  - Deliberations of standards committees

This will enable (but not compel) the Standards Committee to exclude the press and public when considering reports from ESOs.

### **4. FINDINGS OF THE STANDARDS COMMITTEE**

- 4.1 Following the hearing the Committee must make one of the following findings:-
1. That the member has not failed to comply with the Code of Conduct.
  2. That the member has failed to comply with the Code of Conduct but no action needs to be taken.
  3. That the member has failed to comply with the Code of Conduct and that one or more sanctions should be imposed.

### **5. SANCTIONS**

- 5.1 The following sanctions are available to the Committee: -
1. Censure of that member.
  2. Restriction for up to 3 months of the member's access to Council premises and resources (any restriction must be reasonable and proportionate and not unduly restrict the member's ability to perform his/her functions and duties as a member).
  3. Partial suspension for up to three months.
  4. Partial suspension for up to three months or until the member submits a written apology or undertakes training or conciliation specified by the Committee.
  5. Suspension for up to three months.
  6. Suspension for up to three months or until the member submits a written apology or undertakes training or conciliation specified by the Committee.

5.2 Sanctions commence immediately but the Committee may postpone the commencement date of the sanction for up to six months. Any time during which a member is suspended does not count against the “six month rule” for attending meetings.

## **6. NOTIFICATION AND PUBLICITY**

6.1 The Committee must as soon as reasonably practicable give written notice of its findings and the reasons for them to: -

- The member subject of the findings
- The ESO concerned
- The Standards Committee (if the finding is by a sub-committee)
- Any person that made an allegation that gave rise to the investigation

6.2 A summary of the findings must also be published in a newspaper circulating in the area. Where the Committee finds that the member concerned has not failed to comply with the Code it shall give notice but shall not publish a summary if the member so requests.

## **7. APPEALS**

7.1 The member concerned may seek permission to appeal by giving notice to the president of the Adjudication Panel. The Adjudication Panel is the body established by the 2000 Act to hear the more serious cases referred to it by ESO's. This notice must be received by the president within 21 days of the member's receipt of notification of the finding. The notice must specify the reasons for the appeal and whether or not the member consents to the appeal be conducted by way of written representations.

7.2 The application for permission to appeal is determined in the absence of the parties (unless special circumstances apply). The application is determined within 21 days of receipt and notification of the decision is sent to the member, the ESO, the Standards Committee and any person who made an allegation which gave rise to the investigation. Where permission is granted the appeal is heard by an Appeal Tribunal. The member may be represented by a solicitor or barrister or, with the prior consent of the tribunal, any other person.

## **8. COSTS AND INDEMNITIES**

8.1 On 1<sup>st</sup> July 2003 the ODPM published proposals to clarify the powers of Council's to indemnify and insure members in respect of certain types of personal liabilities. A copy of the consultation document appears at **Appendix B.**

8.2 The Government considers that:-

- (a) It should be for authorities to decide, when setting the terms on which indemnities are given or insurance provided, whether or not indemnities or insurance should be permitted to cover costs incurred where a councillor is subsequently found not to be in breach of the code;

- (b) that in relation to cases in which a councillor has breached the code, but it is decided the offence does not warrant any action, the authorities should also be free to make their own decisions as to whether or not indemnities and insurance should provide cover to the member; and
- (c) indemnities and insurance should not be available where there is a finding of misconduct and action is to be taken. The Government considers that it is not appropriate for authority funds to be used directly to fund or reimburse a member where there has been a finding of misconduct and the misconduct is sufficiently serious to warrant action.
- (d) It is considered that authorities should be given a considerable degree of flexibility but that it would be inappropriate for indemnities or insurance ever to cover the type of case mentioned in paragraph (c). In relation to the cases mentioned in paragraph (c) and (b) it will still be necessary for an authority to consider carefully whether an indemnity or insurance should extend this far and will need to assure themselves that, in the particular case, the provision of the indemnity or insurance is a sound financial decision and generally appropriate.
- (e) The Government seeks views on:
  - Whether indemnities for allegations of a breach of the code of conduct should be permitted: and if so
    - should they be provided only where a member is subsequently found not to have breached the code or
    - should an authority also be able to apply its own policy in circumstances where a breach has occurred but that no action is deemed necessary.
  - Whether authorities should be allowed to only purchase insurance to cover individuals' costs in the same circumstances as an indemnity would be permitted; and
  - what safeguards may be needed to prevent over-reliance on legal representations.

## **9. COMMENTS OF THE DIRECTOR OF FINANCE**

- 9.1 There are no immediate financial implications resulting from the government's proposals. Should the proposed regulations be progressed further consideration would be required in relation to the potential costs of insurance provision. Costs would only be incurred should the council decide to provide insurance cover for individuals' costs in relation to allegations of a breach of the code of conduct.

## **10. COMMENTS OF THE HEAD OF LEGAL SERVICES**

- 10.1 The comments of the Head of Legal Services are contained within the report.

**Local Government Act 2000**

**List of Background Papers**

No.	Description of Background Papers	Name/Ext of Holder	Department/Location
1	The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003	Michael Cogher Ext 2700	PAD Room 133a Hammersmith Town Hall

## Statutory Instrument 2003 No. 1483

### **The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003**

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STATUTORY INSTRUMENTS

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**2003 No. 1483**

**LOCAL GOVERNMENT**

The Local Authorities (Code of Conduct) (Local Determination)  
Regulations 2003

<i>Made</i>	<i>5th June 2003</i>
<i>Laid before Parliament</i>	<i>6th June 2003</i>
<i>Coming into force</i>	<i>30th June 2003</i>

**ARRANGEMENT OF REGULATIONS**

PART 1

*General*

1. Citation, commencement and application
2. Interpretation
3. Amendment of the Relevant Authorities (Standards Committees) Regulations 2001
4. Modification of section 63 of the Local Government Act 2000

PART 2

*Consideration by Standards Committees*

5. Reports received by a monitoring officer
6. Hearings by standards committees
7. Findings of standards committees
8. Notification of findings of standards committees

PART 3

*Appeals*

9. Notice of appeals
10. Conduct of appeals
11. Composition of appeals tribunals
12. Failure of member to attend appeal hearing
13. Outcome of appeals

The Secretary of State, in exercise of the powers conferred upon him by sections 53(6) and (12), 54(4), 55(8), 66, 73(1) to (6), and 105 of the Local Government Act 2000<sup>[1]</sup> hereby makes the following Regulations:

PART 1

GENERAL

**Citation, commencement and application**

1. - (1) These Regulations may be cited as the Local Authorities (Code of

Conduct) (Local Determination) Regulations 2003 and shall come into force on 30th June 2003.

(2) These Regulations apply to relevant authorities in England and to police authorities in Wales[2].

### **Interpretation**

2. - (1) In these Regulations -

"the Act" means the Local Government Act 2000;

"Adjudication Panel" means, in respect of a relevant authority in England, the Adjudication Panel for England established under section 75(1) of the Act and, in respect of a police authority in Wales, the Adjudication Panel for Wales established under section 75(2) of the Act;

"any other authority concerned" means any authority of which a person was a member at the time the matters complained of occurred;

"appeals tribunal" means a tribunal constituted in accordance with Part 3 of these Regulations;

"authority" means a relevant authority in England and a police authority in Wales;

"an authority's code of conduct" means a code of conduct adopted by an authority under section 51 of the Act and includes any mandatory provisions of the model code of conduct which apply to the members and co-opted members of an authority pursuant to subsection (5)(b) of that section;

"authorities concerned" means the authority of which a person is a member and, where at the time any matter complained of took place that person was a member of another authority, that authority;

"the authority concerned" means the authority of which a person is a member;

"ethical standards officer" means, subject to paragraph (2), an ethical standards officer appointed under section 57(5)(a) of the Act;

"ethical standards officer concerned" means the ethical standards officer who referred any matter under consideration to a monitoring officer or a standards committee;

"member", except where the context otherwise requires, means a member or co-opted member of an authority[3];

"monitoring officer" means the monitoring officer

designated in respect of an authority in accordance with the provisions of section 5 of the Local Government and Housing Act 1989[4];

"the parish councils concerned" means the parish council of which a person is a member and, where at the time any matter complained of took place that person was a member of another parish council, that council;

"the Standards Board" means the Standards Board for England established under section 57 of the Act[5];

"standards committee" means the standards committee, or sub-committee of a standards committee, which exercises functions in relation to an authority under sections 54 and 55 of the Act[6];

(2) Any reference in these Regulations to an ethical standards officer shall, as regards Police Authorities in Wales, be construed as a reference to a Local Commissioner in Wales.

#### **Amendment of the Relevant Authorities (Standards Committees) Regulations 2001[7]**

3. - (1) The Relevant Authorities (Standards Committees) Regulations 2001 shall be amended in accordance with the following provisions.

(2) For regulation 7(1) there shall be substituted the following provision -

" 7. - (1) Subject to paragraphs (2), (3) and (4), Part VA of the 1972 Act shall apply in relation to meetings of a standards committee, or sub-committee of a standards committee, of an authority as it applies to meetings of a principal council."

(3) After regulation 7(3) there shall be inserted the following provision -

" (4) Where a meeting of a standards or a sub-committee of a standards committee is convened to consider a matter referred under the provisions of section 64(2) or 71(2) of the Act the provisions of Schedule 12A of the 1972 Act shall apply with the addition of the following descriptions of exempt information after paragraph 15 of Part I of that Schedule -

" 16. Information relating to the personal circumstances of any person.

17. Information which is subject to any obligation of confidentiality.

18. Information which relates in any way to



matters concerning national security.

19. The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 64(2) of 71(2) of the Local Government Act 2000."

#### **Modification of section 63 of the Local Government Act 2000**

4. - (1) The provisions of section 63(1) of the Act shall apply in respect of standards committees and appeals tribunals in the performance of any of their functions under these Regulations subject to the modification set out below.

(2) Section 63(1) of the Act shall be modified so that after paragraph (a) there is inserted the following paragraph -

" (aa) the disclosure is made for the purpose of enabling a standards committee or sub-committee of a standards committee established under this Part to perform any of its functions under this Part or under Regulations made under this Part in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct or is made for the purpose of enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of such a standards committee or sub-committee in connection with an allegation of a breach of an authority's code of conduct."

## **PART 2**

### **CONSIDERATION BY STANDARDS COMMITTEES**

#### **Reports received by a monitoring officer**

5. Where a matter is referred to a monitoring officer of an authority under section 64(2) or 71(2) of the Act he shall -

(a) send a copy of any report received from the ethical standards officer who has referred the matter to any member who is the subject of such a report; and

(b) arrange for the standards committee of that authority to meet to consider that report.

#### **Hearings by standards committees**

6. - (1) Where a monitoring officer refers to a standards committee a report received from the ethical standards

officer under section 64(2) or 71(2) of the Local Government Act 2000 the standards committee shall convene to conduct a hearing in relation to the allegation that the member failed to comply with the authority's code of conduct or with the code of conduct of any other authority concerned.

(2) The standards committee of an authority shall ensure that -

(a) the hearing is conducted having regard to any guidance issued by the Standards Board<sup>[8]</sup> pursuant to section 57(5) of the Act;

(b) subject to sub-paragraph (c), the hearing is held within the period of three months beginning on the date on which the monitoring officer first received a report pursuant to sections 64(2) or 71(2) of the Act;

(c) the hearing shall not be held until at least 14 days after the date on which the monitoring officer sent the report under the provisions of regulation 5(a) to the member who is to be the subject of the hearing unless the member concerned agrees to the hearing being held earlier;

(d) any member who is the subject of a report being considered by the standards committee is given an opportunity to present evidence in support of his case; and

(e) any member who is the subject of a report being considered by the standards committee is given the opportunity to make representations at the hearing -

(i) either orally or, if he so chooses, in writing; and

(ii) either himself or, if he so chooses, through any representative appointed by him pursuant to paragraph (7).

(3) A standards committee may, subject to the provisions of paragraph (2), conduct a hearing using such procedures as it considers appropriate in the circumstances.

(4) A standards committee may arrange for the attendance at a hearing of such witnesses as it deems appropriate.

(5) Subject to paragraph (6), a member who is the subject of a hearing may arrange for the attendance at that hearing of such witnesses as he wishes.

(6) A standards committee may place a limit on the

number of witnesses a member may call if it is of the view that the number the member proposes to call is unreasonable.

(7) Any member who is the subject of a hearing may be represented by counsel, by a solicitor or, with the prior consent of the standards committee, by any person whom he wishes to represent him.

(8) If a member who is the subject of a report to the standards committee fails to attend a hearing of which he has had notice, the standards committee may -

(a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of the member; or

(b) adjourn the hearing to another date.

#### **Findings of standards committees**

7. - (1) Following a hearing held pursuant to regulation 6 (1), a standards committee shall make one of the following findings -

(a) that the member who was the subject of the hearing had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned;

(b) that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned but that no action needs to be taken in respect of the matters which were considered by the standards committee; or

(c) that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and that a sanction under paragraph (2) or (3) should be imposed.

(2) If a standards committee makes a finding under paragraph (1)(c) in respect of a person who is no longer a member of any authority in respect of which that standards committee exercises any functions under Part III of the Act, it shall censure that person.

(3) If a standards committee makes a finding under paragraph (1)(c) in respect of a member who is a member of an authority in respect of which that standards committee exercises any functions under Part III of the Act, it shall impose any one of, or any combination of, the following sanctions -

(i) censure of that member;

(ii) restriction for a maximum period of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member -

(aa) are reasonable and proportionate to the nature of the breach; and

(bb) do not unduly restrict the member's ability to perform his functions and duties as a member.

(iii) partial suspension<sup>[9]</sup> of that member for a maximum period of three months;

(iv) partial suspension of that member for a maximum period of three months or until such time as he submits a written apology or undertakes any training or conciliation specified by the standards committee;

(v) suspension<sup>[10]</sup> of that member for a maximum period of three months;

(vi) suspension of that member for a maximum period of three months or until such time as he submits a written apology or undertakes any training or conciliation specified by the standards committee.

(4) Subject to paragraph (5), any sanction imposed under this regulation shall commence immediately following its imposition by the standards committee.

(5) A standards committee may direct that any sanction imposed under paragraphs (3)(ii) to (vi) shall commence on any date within a period of six months after the imposition of that sanction.

#### **Notification of findings of standards committees**

8. - (1) A standards committee of an authority shall, as soon as reasonably practicable -

(a) take reasonable steps to give written notice of a finding made under regulation 7 and the reasons for such finding to -

(i) the member who is the subject of that finding;

(ii) the ethical standards officer concerned;

(iii) the standards committee of the authority concerned;

(iv) the standards committee of any other authority concerned;

(v) any parish councils concerned; and

(vi) any person who made an allegation that gave rise to the investigation; and

(b) subject to paragraph (2), arrange for a summary of the finding to be published in one or more newspapers circulating in the area of the authorities concerned.

(2) Where the standards committee makes a finding under regulation 7(1)(a), the notice under paragraph (1)(a) shall -

(a) state that the standards committee found that the member who was the subject of the hearing had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and shall give its reasons for reaching that finding; and

(b) not be published in summary in accordance with paragraph (1)(b), if the member concerned so requests.

(3) Where the standards committee makes a finding under regulation 7(1)(b), the notice under paragraph (1)(a) shall -

(a) state that the standards committee found that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned but that no action needs to be taken in respect of that failure;

(b) specify the details of the failure;

(c) give reasons for the decision reached by the standards committee; and

(d) state that the member concerned may apply for permission to appeal against the finding under the provisions of Part 3 of these Regulations.

(4) Where the standards committee makes a finding under regulation 7(1)(c), the notice under paragraph (1)(a) shall -

(a) state that the standards committee found that the

member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned;

(b) specify the details of the failure;

(c) give reasons for the decision reached by the standards committee;

(d) specify the sanction imposed in accordance with regulation 7(2) or (3), and

(e) state that the member concerned may apply for permission to appeal against the finding under the provisions of Part 3 of these Regulations.

### PART 3

#### APPEALS

##### **Notice of appeals**

9. - (1) Where a standards committee of an authority makes a finding under regulation 7(1) the member who is the subject of that finding may, by way of notice in writing given to the president of the Adjudication Panel, seek permission to appeal.

(2) Such notice requesting permission to appeal must be received by the president of the Adjudication Panel within 21 days of the member's receipt of notification of a finding made under regulation 7(1) and must specify -

(a) the reasons for the appeal; and

(b) whether or not that member consents to the appeal being conducted by way of written representations.

(3) An application for permission to appeal shall be decided by the president of the Adjudication Panel or, in his absence, by the deputy president on consideration of the application and, unless the president or the deputy president (as the case may be) considers that special circumstances render a hearing desirable, in the absence of the parties.

(4) In reaching his decision as to whether to give permission to appeal against the finding of a standards committee under regulation 7(1)(b) pursuant to paragraph (3) the president, or in his absence the deputy president, shall have regard to whether there is a reasonable prospect of the appeal being successful (either in whole or in part).

(5) The president or, in his absence, the deputy president shall, within 21 days of receipt of a notice requesting permission to appeal given in accordance with paragraphs (1) and (2), send notice of the decision made pursuant to paragraph (3) to -

- (a) the member who gave notice of appeal;
- (b) the ethical standards officer concerned;
- (c) the standards committee of the authorities concerned;
- (d) any parish councils concerned; and
- (e) any person who made an allegation that gave rise to the investigation.

(6) If permission is refused the notice given under paragraph (5) shall give the reasons for that decision.

#### **Conduct of appeals**

10. - (1) Where permission for an appeal to proceed has been given pursuant to regulation 9 the person sending notice of that decision shall refer that matter to a tribunal (referred to in these Regulations as an "appeals tribunal") which shall conduct an appeal in accordance with this Part.

(2) Where a member does not indicate his consent to an appeal being conducted by written representations in accordance with regulation 9(2)(b), an appeals tribunal shall conduct an appeal hearing.

(3) Where an appeal hearing is to be held the member concerned shall be given 21 days notice in writing of the date of the hearing by the appeals tribunal.

(4) Where a member indicates his consent to an appeal being conducted by written representations in accordance with regulation 9(2)(b), an appeals tribunal may either -

- (a) conduct an appeal hearing; or
- (b) conduct the appeal by way of written representations,

as the appeals tribunal shall see fit.

(5) The member concerned may appear at any hearing before the appeals tribunal in person or may be represented by counsel, a solicitor or, subject to the prior consent of the appeals tribunal, any person whom he desires to represent him.

**Composition of appeals tribunals**

11. - (1) An appeals tribunal shall consist of not less than three members appointed by the president of the Adjudication Panel (or in his absence the deputy president) from the members of the Adjudication Panel.

(2) The president or the deputy president of the Adjudication Panel may be a member of an appeals tribunal.

(3) A member of the Adjudication Panel may not at any time be a member of an appeals tribunal drawn from the Panel which is to conduct an appeal on a matter relating to a member of an authority if, within the period of five years ending with that time, the member of the Adjudication Panel has been a member or an officer of any of the authorities concerned or a member of any committee, sub-committee, joint committee or joint sub-committee of any of the authorities concerned.

(4) A member of the Adjudication Panel who is directly or indirectly interested in any matter which is, or is likely to be, the subject of an appeal conducted by an appeals tribunal -

(a) must disclose the nature of his interest to the president or deputy president of that Panel; and

(b) may not be a member of an appeals tribunal which conducts an appeal in relation to that matter.

(5) An appeals tribunal shall conduct an appeal using such procedures as it considers appropriate in the circumstances.

**Failure of member to attend appeal hearing**

12. - (1) If a member fails to attend or be represented at an appeal hearing of which he has been duly notified, the appeals tribunal may -

(a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in that person's absence, or

(b) adjourn the hearing.

(2) Before deciding to determine an appeal in the absence of a member, the appeals tribunal shall consider any representations in writing submitted by that person in response to the notice of hearing and, for the purpose of this paragraph, any reply shall be treated as a representation in writing.

**Outcome of appeals**

13. - (1) An appeals tribunal which conducts an appeal under this Part must uphold or dismiss the finding or, if it so



decides, part of the finding of a standards committee made under regulation 7(1).

(2) Where an appeals tribunal upholds the finding, or part of a finding, of a standards committee made under regulation 7(1), it may -

(a) approve any penalty imposed by that committee;

(b) require that committee to impose a penalty under regulation 7(2) or (3); or

(c) require that committee to impose a different penalty under regulation 7(2) or (3) from that already imposed.

(3) Where an appeals tribunal dismisses the finding of a standards committee made under regulation 7(1), the decision of that committee (including any sanction imposed) shall cease to have effect from the date of that dismissal.

(4) The appeals tribunal must give written notice of its decision to -

(a) the member who is the subject of the decision to which the notice relates;

(b) the ethical standards officer concerned;

(c) the standards committee of the authorities concerned; and

(d) any person who made an allegation that gave rise to the investigation.

(5) The appeals tribunal must arrange for a summary of its decision to be published in one or more newspapers circulating in the area of the authorities concerned.

(6) A standards committee must comply with any decision of an appeals tribunal of which it is given notice under this regulation.

Signed by authority of the Secretary of State

*Christopher Leslie*  
Parliamentary Under Secretary of State, Office of the  
Deputy Prime Minister

5th June 2003

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Under the provisions of Part III of the Local Government Act 2000 ethical standards officers may carry out investigations into allegations that a member of a relevant authority in England has failed to comply with the authority's code of conduct. A Local Commissioner in Wales may carry out a similar investigation into an allegation that a member of a police authority in Wales has failed to comply with the authority's code of conduct. The ethical standards officer or the Local Commissioner, as the case may be, may choose to refer the matters under investigation and send the report on the outcome of his investigation to the monitoring officer of any authority concerned. These Regulations make provision in respect of the way such matters referred to monitoring officers are to be dealt with.

Part 1 makes general provision regarding commencement and application. The Regulations will commence on 30th June 2003 and apply to relevant authorities in England and police authorities in Wales.

Regulation 3 amends the Relevant Authorities (Standards Committees) Regulations 2001 ("the 2001 Regulations"). The 2001 Regulations make provision in respect of standards committees of relevant authorities in England and police authorities in Wales. The 2001 Regulations apply, with certain modifications, the provisions of Part VA of the Local Government Act 1972 (which relates to access to meetings and documents of certain authorities, committees and sub-committees) to meetings of standards committees. The provisions of Regulation 3 further amend those Regulations so that where a standards committee is meeting to deal with an allegation of a breach of a code of conduct under these Regulations, the application of Part VA is further modified.

Regulation 4 modifies the application of section 63 of the Local Government Act 2000 in respect of standards committees or appeals tribunals in the performance of their functions under Part III of that Act or under these Regulations so as to provide that disclosure of any information obtained by the ethical standards officer under section 61 or 62 of the Local Government Act 2000 is not prohibited if it is made for the purpose of enabling any of those functions to be carried out.

Part 2 makes provision in respect of consideration by

standards committees of matters referred by an ethical standards officer or a Local Commissioner.

Regulation 5 requires that a monitoring officer receiving a report will arrange for the standards committee to convene to consider it. Regulation 6 makes provision in respect of the hearings of the standards committees and Regulation 7 makes provision as to the findings they may make and the sanctions they may impose. Regulation 8 makes provisions regarding the notification and publication of their findings and any sanction imposed, including the requirement that information must be given regarding the manner in which a member may appeal against such finding under the provisions of Part 3 of the Regulations.

Part 3 makes provision generally regarding appeals.

Regulation 9 makes provision regarding the seeking of permission to appeal from the president of the Adjudication Panel, which is a body established under Part III of the Local Government Act 2000. Regulation 10 makes provision in respect of the conduct of such appeals in the event that permission is granted. An appeal will be dealt with by an appeals tribunal, either by holding a hearing, at which the member appealing may be represented or, if the member agrees, by written representations. Regulation 11 makes provision regarding the composition of an appeals tribunal, the members of which will be drawn from the membership of the Adjudication Panel. Regulation 12 makes provision for dealing with an appeal in the event that a member fails to attend an appeal hearing of which he has had notice. Regulation 13 makes provision regarding the findings that an appeals tribunal may make and the steps it should take regarding notification and publication of its decision.

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*Notes:*

[1] 2000 c. 22.[back](#)

[2] *See* Chapter III of Part III to the Act for the procedure in relation to local investigation and determination for relevant authorities in Wales.[back](#)

[3] *See* section 49(7) of the Act for the definition of "co-opted member". Under section 83(3) and (4) of that Act, references to a member of a relevant authority include references to an elected mayor, an elected executive member, the Mayor of London and a member of the London Assembly.[back](#)

[4] 1989 c. 42. *See* section 83(12) of the Act for the exercise of functions by a monitoring officer of a responsible

[authority in relation to parish councils.back](#)

[5] *See* section 57(5) of the Act for the functions of the Standards Board for England in relation to both relevant authorities in England and police authorities in Wales.[back](#)

[6] *See* section 55(1) of the Act for the functions of the standards committees of responsible authorities in relation to parish councils.[back](#)

[7] [2001/2812.back](#)

[8] Section 57(5)(b) of the Act gives the Standards Board for England power to issue guidance to relevant authorities in England and police authorities in Wales on matters relating to the conduct of members and co-opted members of such authorities.[back](#)

[9] *See* section 83(7), (9) and (10) of the Act for the interpretation of partial suspension.[back](#)

[10] *See* section 83(9) and (10) of the Act for the interpretation of suspension.[back](#)

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*Prepared 12 June 2003*

# Providing indemnities to relevant authority officers and members

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**Providing indemnities to relevant authority officers and members**

**Front cover**

**Providing Indemnities to Relevant Authority Officers and Members**

A Consultation paper on the nature of the power to be conferred on relevant authorities under s.101 of the Local Government Act 2000

July 2003

Office of the Deputy Prime Minister: London

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## Providing indemnities to relevant authority officers and members

### About this consultation exercise

S101 of the Local Government Act 2000 provides the Secretary of State with an Order making power, allowing him to confer a power on relevant authorities<sup>1</sup> in England and police authorities in Wales to provide indemnities for some or all of their members and officers.

This paper and draft Order set out the Government's proposals for the use of that order making power. The paper will be of particular interest to members and senior officers of relevant authorities. Copies of the consultation paper are being sent to all principal local authorities, fire, national parks and other joint bodies, and parish and town councils in England; to all police authorities in England and Wales; and to the organisations representing all relevant authorities. Copies are also being sent to a range of bodies that have an interest in the issues.

We invite responses to the questions raised in the paper and on the proposed approach to the drafting of the power. In addition, we would welcome specific examples of situations in which consultees feel it should be possible for the individuals concerned to be indemnified, but which are not covered under the current proposals. All responses must be received by **6 October 2003**.

Responses should be clearly marked as such and sent to:

Indemnities Consultation Team  
Local Government Legislation Division  
ODPM, Zone 5/D1  
Eland House  
Bressenden Place  
London SW1E 5DE

Fax:020 7944 5183  
e-mail:[lgl@odpm.gsi.gov.uk](mailto:lgl@odpm.gsi.gov.uk)

Any questions, comments or complaints about this consultation exercise should be sent to:

James Holdaway  
Local Government Legislation Division  
ODPM, Zone 5/D1  
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London SW1E 5DE

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e-mail: [james.holdaway@odpm.gsi.gov.uk](mailto:james.holdaway@odpm.gsi.gov.uk)

In due course, the Department may wish to publish responses to this consultation exercise or deposit them in the Department's library. Unless, therefore, a respondent specifically asks that a response be treated as confidential, it may be published, or otherwise made public. Confidential responses will be included in any statistical summary of the numbers of comments received and views expressed.

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<sup>1</sup> Relevant authorities are defined in s.49 of the Local Government Act 2000 as county councils, district councils, London Borough councils, parish councils, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, the Common Council of the City of London in its capacity as a local authority or police authority, the Council of the Isles of Scilly, fire authorities, police authorities, joint authorities, the Broads Authority and National Park authorities.

## Providing indemnities to relevant authority officers and members

### Introduction

1. There has been uncertainty about the extent of the powers of authorities to indemnify their members and officers out of public funds for any personal liability arising from actions or decisions taken by them in the course of their official duties.
2. In the past, local authorities have relied on various statutory provisions that either exclude liability or permit some indemnities to be granted. Section 265 of the Public Health Act 1875, as extended by sections 39 and 44(1) of the Local Government (Miscellaneous Provisions) Act 1976 provides a limited exclusion of liability. Taken together these provisions mean that there is already a statutory bar on liability of members and officers, if they are acting in pursuance of a statutory function or power of the authority and they are acting in good faith. Nothing in these proposals affects that position. In addition section 111(1) of the Local Government Act 1972 provides ancillary powers that may permit the offer of an indemnity by an authority, if to do so facilitates or is incidental or conducive to the discharge of a function of the authority.
3. Doubts have arisen, however, about the extent to which authorities can provide indemnities, particularly where individuals incur personal liability for their actions on external bodies to which they have been appointed by their authority, and the scope to cover actions that are ultra vires or involve negligence.
4. A High Court decision in April 2000 (*R v Westminster City Council, ex parte Barry Legg (2000) 2 LGLR 961*) has changed the position to some extent. The judgement made it clear that a reasonably wide ranging indemnity was lawful within the provisions of section 111 in certain instances. However, some uncertainty remains as to the extent of existing powers. Given the importance that the Government attaches to local authorities working in partnership with other bodies and using their powers in innovative ways in order to ensure delivery of high-quality and cost-effective services, it is important that these matters should be clarified.
5. In the Local Government Act 2000, the Government took order-making powers to allow the Secretary of State to provide authorities with the ability to indemnify their members and officers in respect of personal liabilities incurred in connection with their service on behalf of their authority.
6. Section 101 of the Act is deliberately wide ranging and permits the Secretary of State to:  
*"make provision for or in connection with conferring a power on relevant authorities in England and police authorities in Wales to provide indemnities to some or all of their members and officers"*.
7. In making an order under s.101 of the Act, the following questions need to be addressed:
  - Which authorities are to be allowed to provide indemnities?
  - Who should authorities be able to indemnify?
  - What liabilities should authorities be able to indemnify?
  - Should any restrictions be placed on authorities' ability to provide indemnities?
  - Are there any other issues that could be usefully clarified by the order?



## Providing indemnities to relevant authority officers and members

### **Which Authorities should be able to provide indemnities?**

8. Section 101 of the Act allows the Secretary of State to provide that all relevant authorities in England<sup>2</sup> and police authorities in Wales should be permitted to provide indemnities. The National Assembly for Wales has powers in relation to other authorities in Wales.

9. Although the range of functions undertaken by the various authorities varies considerably, the Government sees no reason to withhold the right to give indemnities from any relevant authority, or from any tier of local government. Parish and town councils are as likely as other authorities to appoint members to serve on outside bodies, such as charitable trusts. In such circumstances, they to need to be able if they so wish to indemnify those individuals against personal liabilities, in the same way as other authorities.

10. **This section relates particularly to article 2 of the Order. The Government proposes therefore that all relevant authorities in England and police authorities in Wales should be provided with the power to indemnify their members and officers. Do you agree?**

### **Who should authorities be able to indemnify?**

11. The Act allows the Secretary of State to provide that authorities should be able to provide indemnities to some or all of their members and officers.

12. The Government considers that it should be for authorities themselves to determine which members and officers should be granted indemnities. Accordingly, it proposes that the power should be widely drafted and should not limit the class of member or officer to whom indemnities can be given. This includes members or officers acting for the authority under its delegated powers or using their own statutory powers (e.g. monitoring officers, chief finance officers, officers making certification under the Local Government Contracts Act 1997). The power will permit authorities to grant indemnities to specific individuals, at the discretion of the authority.

13. The Government considers that the power to grant indemnities out of public funds should be limited to circumstances in which the member or officer acts by virtue of membership of, or employment by, the relevant authority and for the purposes of that authority. This specifically allows indemnities to be available where an individual is working in partnership with another organisation, so long as the above conditions are met. It will not extend to members or officers acting in a personal capacity.

14. The Government considers that indemnities should be capable of being provided in relation to any claim made after the indemnity has been given (whatever the date of the action complained of).

15. Only members and officers who are in post at the time the indemnity is granted will be eligible for an indemnity, but in relation to action taken while they are members or officers the indemnity will continue to be effective in respect of a claim made after they have ceased to be a member or officer, if the terms of the indemnity provide for this. As to terms, see also paragraph 42 below.

16. **This section relates particularly to articles 3 and 5 of the Order. Do you agree that authorities should be able to indemnify all, or such of their members or officers as they determine, for liabilities incurred when they are acting by virtue of their membership of, or employment by, the relevant authority and for the purposes of that authority?**

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<sup>2</sup> Relevant authorities are defined in s.49 of the Local Government Act 2000 as county councils, district councils, London Borough councils, parish councils, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, the Common Council of the City of London in its capacity as a local authority or police authority, the Council of the Isles of Scilly, fire authorities, police authorities, joint authorities, the Broads Authority and National Park authorities.

## Providing indemnities to relevant authority officers and members

### What liabilities should authorities be able to indemnify?

17. With the provisos set out below, the Government considers that authorities should be permitted to indemnify individuals against any personal financial liability that they incur arising from circumstances in which the member or officer acts by virtue of membership of, or employment by, the relevant authority and for the purposes of that authority. Such an indemnity could be in terms of financial support or support in kind (such as legal advice or representation by an employee of the authority). However, authorities should not be able to, and of course should have no need to, indemnify in circumstances that are clearly covered by the statutory exclusion of liability under section 265 of the Public Health Act 1875.

18. Accordingly, authorities' powers should be wide enough to remove any doubts about their ability to indemnify individuals, including:

- where an individual becomes personally responsible for the debts or other liabilities of a body to which they have been appointed by the authority;
- where an individual incurs costs defending him, or herself, against legal proceedings brought by a third party in relation to their duties as a member or officer - including any in which the individual is co-joined with the authority.

19. Do you agree with the above circumstances or are there other circumstances in which authorities would want to provide indemnities and which should be covered by the s.101 order?

### Should any restrictions be placed on authorities' power to provide indemnities?

#### *Tests*

20. The Government considers that some restrictions should be placed on the provision of indemnities. In particular the Government proposes that the basic test should be that an indemnity should not be available to cover any case in which an individual has acted fraudulently or recklessly. Also, indemnities should not extend to liabilities arising from any action, or failure to act, which constitutes a criminal offence (though this would not exclude the possibility of an indemnity to cover the costs of a defence case in instances in which the defendant was eventually found not guilty of the offence).

21. The Government therefore proposes that members and officers should only be able to rely on indemnities funded directly by the authority if when taking the action giving rise to the liability they have acted honestly and in good faith. It is not proposed that an officer or member could rely on an indemnity if when taking the action giving rise to the liability they have acted recklessly.

22. The effect of these tests is that indemnities could be offered to cover liabilities that have been incurred in connection with the authority's functions and a councillor's or officer's membership of, or employment by, the relevant authority, if the individual concerned had acted honestly and in good faith at all times.

23. This section relates particularly to article 6 of the Order. Are the restrictions on relevant authorities' power to provide indemnities proposed above appropriate?

#### *Insurance*

24. The Government proposes that alongside the power to provide indemnities, s.101 should also be used to make clear that authorities may also arrange for insurance for members or officers against the risks that may be the subject of an indemnity permitted by the Order. In common with other situations where authorities purchase insurance, they will have to weigh up the respective advantages and disadvantages of purchasing insurance or meeting the cost of indemnities from their own resources. In all cases authorities will need to give due weight to their obligations in relation to financial probity and notably Best Value considerations. This section relates particularly to article 4 of the Order.

## Providing indemnities to relevant authority officers and members

### **Libel action**

25. The Government proposes expressly to prohibit authorities from using the powers to be conferred by the new Order to meet the cost of members and officers taking legal action for slander or libel, either directly or through insurance. Authorities should be able to provide indemnities to individuals against the costs of defending such actions (where the action relates to their official functions), but the Government does not believe that individuals should be funded at public expense to bring proceedings against a third party. To do so could stifle legitimate public debate.

26. A recent judgement<sup>3</sup> indicated that authorities may already have the power in some cases to make a decision to fund libel proceedings brought by its officers and to pay the costs of such an action, by virtue of s.111 (1) of the Local Government Act 1972. Any such power would not be removed by this Order. However, the judge also said:

*"The hazards of defamation exercises are, or should be, notorious. Common sense suggests that the council's disastrous experience in the present case should be sufficient to warn-off all but the most litigious of local authorities from granting indemnities in respect of the costs of defamation proceeding brought by their officers."*

27. Authorities will clearly have to consider their position carefully before using this power and note the reminder given in the case as to the availability of judicial review as a remedy in cases of irrational or otherwise improper decisions. This will include any use of such a power purely to circumvent the basic rule that an authority cannot protect itself by bringing defamation proceedings. This section relates particularly to article 6 of the Order.

28. Do you agree that the Government is right to:

- limit indemnities from authority reserves to situations where individuals have acted honestly and in good faith;
- permit authorities to insure against the risk that indemnities might be called upon;
- prohibit authorities from providing indemnities, either directly or through insurance, for the cost of starting proceedings for defamation.

29. Are there other express prohibitions that should be attached to the power to give indemnities?

### **Actions or guarantees subsequently found to be ultra vires**

30. Bodies with which local authorities do business at times seek guarantees, opinion letters or letters of comfort as a way of protecting themselves against the possibility that the commitments being entered into by the authority are *ultra vires*. Should the transactions subsequently prove to be outside the powers of the authority and enforcement against the authority thus impossible, the other party may try to claim against the individual who acted in the matter.

31. In addition authorities are increasingly entering into partnerships and developing innovative ways to carry out their functions. We are aware that there are concerns about individuals becoming liable for debts relating to these activities, should they prove to be *ultra vires* the authority, despite the authority taking advice on the matter.

32. The Government believes that the situations in which principal authorities might be deemed to be acting *ultra vires* has been greatly reduced by the introduction of the power of to promote well-being<sup>4</sup>. In addition the need for letters of comfort should also have been reduced by Local Government

<sup>3</sup> R v Bedford Borough Council, Ex Parte Gregory Comminos (2003) QBD Administrative Court (Sullivan J) 24/1/2003.

<sup>4</sup> Local Government Act 2000, section 2.

### Providing indemnities to relevant authority officers and members

(Contracts) Act 1997, which clarifies authorities' powers to contract with the private sector and allows for the contractor to be compensated if the contract is, nevertheless, deemed unlawful. The Government has, however, considered whether there should be some scope to allow indemnities to be granted in cases where actions are shown to be *ultra vires* and has concluded that there are limited cases where this may be permissible. The Government therefore would welcome responses to the proposal that authorities should be able to provide indemnities to members and officers to cover cases in which an individual is subject to proceedings in relation to a matter authorised by the indemnifying authority but which is later found to be *ultra vires* the authority if:

- (a) the individual indemnified, at the point at which he or she acted, believed that the action he or she was taking was *intra vires* the authority or, where the actions consist of providing an opinion letter or letter of comfort, that the contents of that letter were true; and
- (b) that belief was honestly and reasonably held.

33. The Government proposes that the Order accompanying this consultation paper should permit authorities to purchase insurance or provide an indemnity to cover any liabilities an individual incurs due to an action or decision that the authority has corporately taken that has subsequently proved to be *ultra vires*, providing the provisos at (a) and (b) above are satisfied.

34. This section relates particularly to article 7 of the Order. The Government seeks views on this approach to indemnifying members or officers who provide guarantees, opinion letters or letters of comfort to third parties or become liable through activities that are subsequently found to be *ultra vires*.

#### *Code of conduct investigations*

35. Finally, the Government seeks views on the question of authorities indemnifying members, or officers, against any costs they might incur in answering allegations that they have breached codes of conduct. This section relates particularly to article 8 of the Order.

36. The new ethical framework introduced by the Local Government Act 2000 provides a means by which allegations of misconduct against members may be undertaken by the monitoring officer (or the Standards Board) and the matter may be heard by the standards committee of a relevant authority (or the Adjudication Panel). It has been proposed that both the Board and the Adjudication Panel would be able to reimburse certain reasonable expenses incurred by the member in connection with either the investigation or the hearing. It has also been proposed that, where a member has made an appeal to the Adjudication Panel from a decision of a standards committee, costs may be awarded to a member where the other party has acted frivolously or vexatiously or the other party's conduct has been wholly unreasonable. However, should a member choose to be legally represented either during the investigation or at any subsequent hearing, the costs of such legal advice would have to be borne by the member.

37. The Government believes that costs incurred by members subject to investigations can, and should, be kept low. It should not be necessary, in the majority of cases, for members to seek legal representation. However, the Government recognises that some councils will wish nevertheless to provide indemnities to, or insurance for, their members for the costs of legal representation in some circumstances.

38. There are several possible processes and outcomes that may occur once an allegation of member misconduct has been made to the Standards Board. These are briefly set out below:

- (a) When an allegation of misconduct is made to the Standards Board, the Standards Board can decide not to pursue the case, or to refer the case for investigation to an Ethical Standards Officer (ESO).
- (b) The ESO may make one of four findings in relation to an investigation:
  - i. find no evidence of misconduct;

### Providing indemnities to relevant authority officers and members

- ii. find evidence of misconduct, but conclude no action need be taken;
- iii. refer the case to the local authority monitoring officer; or
- iv. refer the case to the Adjudication Panel for England.

Alternatively, an ESO may cease their investigation prior to its conclusion and refer the matter to a monitoring officer for investigation and report to a standards committee meeting.

(c) Regulations are being prepared on the procedures to be followed if the case is referred to a monitoring officer ((b iii) above). It is proposed that the monitoring officer would prepare a report for the standards committee of the authority. The standards committee could then find:

- i. that there has been no breach of the code;
- ii. the code has been breached, but no action need be taken; or
- iii. the code has been breached, and some sanction should be imposed.

(d) If the case is referred to the Adjudication Panel for England ((b)(4) above), an Adjudication Panel tribunal can find:

- i. that the code has not been breached; or
- ii. the code has been breached and a sanction should be imposed.

(e) A member can appeal from an Adjudication Panel tribunal to the High Court; or if the case is heard at standards committee level, it is proposed that appeal would be first to the Adjudication Panel for England, then to the High Court.

39. The Government considers that:

(a) it should be for authorities to decide, when setting the terms on which indemnities are given or insurance provided, whether or not indemnities or insurance should be permitted to cover costs incurred where a councillor is subsequently found not to be in breach of the code;

(b) that in relation to cases in which a councillor has breached the code, but it is decided the offence does not warrant any action, the authorities should also be free to make their own decisions as to whether or not indemnities and insurance should provide cover to the member; and

(c) indemnities and insurance should not be available where there is a finding of misconduct and action is to be taken. The Government considers that it is not appropriate for authority funds ever to be used directly to fund or reimburse a member where there has been a finding of misconduct and the misconduct is sufficiently serious to warrant action.

40. In taking this approach, it is considered that authorities should be given a considerable degree of flexibility but that it would be inappropriate for indemnities or insurance ever to cover the type of case mentioned in paragraph 39(c). In relation to the cases mentioned in paragraph 39(a) and (b), it will still be necessary for an authority to consider carefully whether an indemnity or insurance should extend this far and will need to assure themselves that, in the particular case, the provision of the indemnity or insurance is a sound financial decision and generally appropriate.

41. The Government seeks views on:

- **Whether indemnities for allegations of a breach of the code of conduct should be permitted: and if so**
  - **should they be provided only where a member is subsequently found not to have breached the code or**
  - **should an authority also be able to apply its own policy in circumstances where a breach has occurred but that no action is deemed necessary?**

Providing indemnities to relevant authority officers and members

- whether authorities should be allowed to only purchase insurance to cover individuals' costs in the same circumstances as an indemnity would be permitted; and
- what safeguards may be needed to prevent over-reliance on legal representation.

*Other issues*

42. The Government considers that the exact terms when an officers or member can call upon an indemnity is for members, officers and the authorities to decide.

43. Are there any other issues that need to be covered in the Order?

*Summary of questions*

44. The Government proposes that all relevant authorities in England and police authorities in Wales should be provided with the power to indemnify their members and officers. Do you agree?

45. Do you agree that authorities should be able to indemnify all, or such of their members or officers as they determine, for liabilities incurred when they are acting by virtue of their membership of, or employment by, the relevant authority and for the purposes of that authority?

46. Are there circumstances, other than those listed in the consultation paper, in which authorities would want to provide indemnities and which we will need to ensure are covered by the s.101 order?

47. Are the restrictions on an authority's power to provide indemnities proposed above appropriate?

48. Do you agree that the Government is right to:

- limit indemnities from authority reserves to situations where individuals have acted honestly and in good faith;
- permit authorities to insure against the risk that indemnities might be called upon;
- prohibit authorities from providing indemnities, either directly or through insurance, for the cost of starting proceedings for defamation.

49. Are there other express prohibitions that should be attached to the power to give indemnities?

50. The Government seeks views on this approach to indemnifying members or officers who provide guarantees, opinion letters or letters of comfort to third parties or become liable through activities that are subsequently found to be ultra vires.

51. The Government seeks views on:

- Whether indemnities for allegations of a breach of the code of conduct should be permitted; and if so
  - should they be provided only where a member is subsequently found not to have breached the code or
  - should an authority also be able to apply its own policy in circumstances where a breach has occurred but that no action is deemed necessary?
- whether authorities should be allowed to only purchase insurance to cover individuals' costs in the same circumstances as an indemnity would be permitted; and
- what safeguards may be needed to prevent over-reliance on legal representation.

52. Are there any other issues that need to be covered in the Order?

Providing indemnities to relevant authority officers and members

**Annex A: Draft Order for Consultation**

*Draft Order laid before Parliament under section 105(6) of the Local Government Act 2000, for approval by resolution of each House of Parliament.*

**STATUTORY INSTRUMENTS**

2002 No. [    ]

**LOCAL GOVERNMENT**

**The Local Authorities (Indemnities for Members and Officers) Order 2003**

*Made - - - - 2003*

*Coming into force - - 2003*

The Secretary of State, in exercise of the powers conferred upon him by sections 101 and 105 of the Local Government Act 2000<sup>(5)</sup> and having consulted such representatives of relevant authorities as he considers appropriate, such representatives of employees of relevant authorities as he considers appropriate and such other persons as he considers appropriate hereby makes the following Order:

**Citation, commencement and interpretation**

1-(1) This Order may be cited as the Local Authorities (Indemnities for Members and Officers) Order 2003.

(2) It shall come into force on [    ] 2003.

(3) In this Order-

"Part III proceeding" means any investigation, report, reference, adjudication or any other proceeding pursuant to Part III of the Local Government Act 2000;

"relevant authority" has the meaning given by section 49(6) of the Local Government Act 2000; and

"secure", in relation to any insurance, includes the arranging of and payment for that insurance.

**Application**

2. This Order applies to relevant authorities in England and to police authorities in Wales<sup>(6)</sup>.

**Indemnities**

3. The authorities to whom this Order applies may, in the cases mentioned in article 5 below, provide indemnities to any of their members or officers.

**Insurance**

4. In place of, or in addition to, providing an indemnity under article 3 above, any authority to whom this Order applies may, in the cases mentioned in article 5 below, secure the insurance of any of its members or officers.

**Cases in which indemnity or insurance may be provided**

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<sup>5</sup> 2000 c.22.

<sup>6</sup> For powers in relation to relevant authorities in Wales, see section 105(2) of the Local Government Act 2000.

### Providing indemnities to relevant authority officers and members

5. Subject to article 6 below, an indemnity may be provided or insurance secured in relation to any action of, or failure to act by, the member or officer in question, which-

(a) is authorised by the authority; or

(b) forms part of, or arises from, any powers conferred, or duties placed, upon that member or officer, as a consequence of any function being carried on by that member or officer (whether or not when exercising that function he does so in his capacity as a member or officer of the authority)-

(i) at the request of, or with the approval of the authority, or

(ii) for the purposes of the authority.

### Restrictions on indemnities or insurance

6.-(1) No indemnity may be provided, or insurance secured, under this Order in relation to any action by or failure to act by, any member or officer which-

(a) constitutes a criminal offence; or

(b) is the result of fraud, deliberate wrongdoing or recklessness on the part of that member or officer.

(2) No indemnity may be provided, or insurance secured, under this Order in relation to the making by the member or officer indemnified or insured of any claim in relation to an alleged defamation of that member or officer but may be provided or secured in relation to the defence by that member or officer of any allegation of defamation made against him.

### Matters that exceed the powers of the authority

7. Notwithstanding any limitation on the powers of the authority which grants an indemnity under article 3, or secures insurance under article 4, the authority may provide an indemnity or secure insurance under those provisions to the extent that the member or officer in question-

(a) believed that the action, or failure to act, in question was within the powers of the authority, or

(b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, believed that the contents of that statement were true, and it was reasonable for that member or officer to hold that belief at the time when he acted or failed to act.

### Terms of indemnity or insurance

8.-(1) Subject to paragraph (2) below, the terms of any indemnity given, or insurance secured, under this Order may be such as the authority in question shall agree.

(2) Where any indemnity given to, or insurance secured for, any member has effect in relation to any Part III proceedings brought against that member, it shall be secured or provided (as the case may be) on the terms that-

(a) should the member in question as a consequence of those proceedings, be suspended or partially suspended from being a member, or disqualified from being or becoming a member, of a relevant authority, the member shall reimburse the authority or the insurer (as the case may be) for any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance; and

(b) if as a consequence of the proceedings the member in question is found to have contravened the Code of Conduct but no further action is to be taken against the member as a consequence of that finding the member may be required to reimburse the authority or insurer if the authority so decides.

Signed by authority of the Secretary of State.

Minister of State



Providing indemnities to relevant authority officers and members

2003 in the Office of the Deputy Prime Minister

DRAFT FOR CONSULTATION

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order provides for circumstances in which a relevant authority in England or a police authority in Wales may provide an indemnity to any of their members or officers or ensure the provision to them of insurance. These powers are in addition to any existing powers that such authorities may have.

The relevant authorities in England are-

- county councils
- district councils
- London borough councils
- parish councils
- the Greater London Authority
- the Metropolitan Police Authority
- the London Fire and Emergency Planning Authority
- the Common Council of the City of London (in its capacity as a local or police authority)
- the Council of the Isles of Scilly
- a fire authority constituted by a combination scheme under the Fire Services Act 1947
- a police authority
- a joint authority established by Part IV of the Local Government Act 1985
- the Broads Authority
- a National Park Authority established under section 63 of the Environment Act 1995.

Article 5 sets out the cases in which indemnities or insurance may be provided. This article restricts the power to cases in which the member or employee is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does extend to cases in which when exercising the function in question the member or officer does so in a capacity other than that of a member or officer of the authority. This would permit insurance or an indemnity, for example, to cover a case where the member or officer acts as a director of a company at the request of his authority, and thus is acting in his capacity as a director.

Article 6 prevents the provision of an indemnity or securing of insurance in relation to criminal acts, intentional wrongdoing, fraud, recklessness, or in relation to the bringing of any action in defamation.

Article 7 gives a limited power to provide an indemnity or insurance where the action or inaction complained of is outside the powers of the authority itself. This power is limited to cases in which the person indemnified or insured-

reasonably believed that the matter in question was not outside those powers, or

where a document has been issued containing an untrue statement as to the authority's powers, reasonably believed that the statement was true when it was issued or he authorised its issuing.

Article 8 gives the authority freedom to negotiate such terms for any indemnity or insurance as it thinks appropriate but requires that those terms include provision for re-payment of sums expended by the authority or the insurer in certain cases in which a member has been found to be in breach of the Code of Conduct applicable to him as a member of the authority (if the indemnity or insurance would otherwise cover the proceedings leading to that finding).

**30 JULY 2003**

**CONTRIBUTORS**  
**(PAD)**

**Standards Committee Determinations – Guidance  
for Monitoring Officers & Standards Committees**

**WARDS**  
**All**

The attached guidance from the Standards Board for England sets out how it is proposed allegations of Councillor misconduct and breaches of the statutory Code of Conduct referred by an Ethical Standards Officer (ESO) to Monitoring Officers should be dealt with at local level. Legislation governing this procedure came into force on 30 June 2003. (*The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 S.I. 1483*).

An ESO will only refer a matter to a local Standards Committee after completing his or her investigation. A local Standards Committee may not re-open the investigation. The Committee's role is to determine (decide) whether or not the member failed to follow the statutory Code of Conduct, and if so, what penalty (if any) should be applied.

Under the Regulations, local Standards Committees must take the guidance issued by the Standards Board for England into account. The guidance aims to provide practical and procedural advice for Monitoring Officers and local Standards Committees on how to prepare for, and hold, a determination hearing, and the process to follow in letting relevant people know the decision in such cases. Although not compulsory, the procedures outlined in the SBE guidance seeks to ensure that cases determined by local Standards Committees are dealt with in a uniformly fair and consistent way. Any processes adopted locally which differ from the guidance should, nevertheless, be consistent with it.

The SBE guidance covers processes for dealing with cases referred from an ESO; pre-hearing matters; the local Standards Committee's determination hearing; notification and publication of the outcome and findings; and rights of appeal to the Adjudication Panel for England.

A local Standards Committee must hold a hearing to determine any referred cases within 3 months of the Monitoring Officer receiving an ESO's investigation report. Failure to do so within that time-frame would place the Committee in statutory breach and could render it liable to Judicial Review proceedings. A determination hearing should normally take place at least 14 days after a Monitoring Officer has sent a copy of the ESO's report to the member the allegation has been made about. It is not open to a local Standards Committee to re-refer matters back to the Standards Board for England for determination.

Members should note that the local determination Regulations now in force do not cover investigations at a local level. The ODPM is in the process of legislating separately to cover this process, via amendments to the Local Government Act 2000 included in the Local Government Bill currently before Parliament, and by the issue of further separate Regulations shortly.

**RECOMMENDATION:**

1. **That the Committee notes the Standard Board for England's procedural Guidance for the determination of referred misconduct allegations.**

**Local Government Act 2000**

**List of Background Papers**

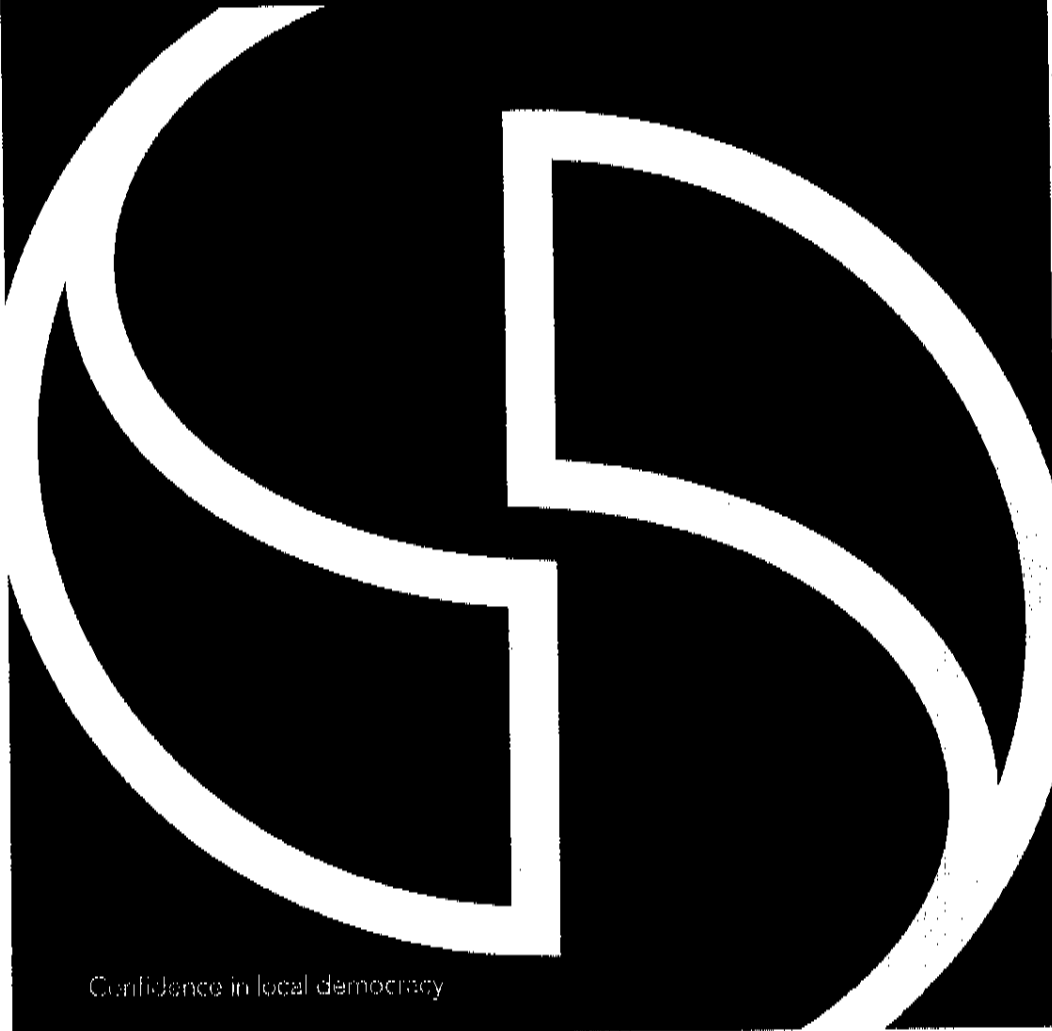
No.	Description of Background Papers	Name/Ext of Holder	Department/Location
1	The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 S.I.1483	John Cheong Ext 2062	PAD Room 203 Hammersmith Town Hall
2	Standards Committee Determinations – Guidance for Monitoring officers & Standards Committees issued by the Standards Board for England	- ditto-	-ditto-

jpc/16/07/03

July 2003



**Standards Committee determinations**  
Guidance for monitoring officers  
and Standards Committees



Confidence in local democracy

**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

**This guide**

This guide provides information on the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003* and includes practical procedural information for Standards Committees on how to hold a hearing. Under the regulations, Standards Committees must take this guidance into account.

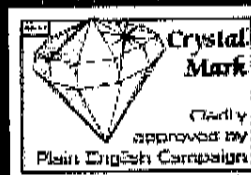
It covers the main parts of the local determination process, including:

- referrals from an Ethical Standards Officer (ESO);
- the pre-hearing process;
- the Standards Committee hearing;
- notice of findings; and
- appeals to The Adjudication Panel for England.

This guide is for monitoring officers and Standards Committee members in:

- district, unitary, metropolitan, county and London borough councils;
- police authorities;
- fire authorities (including fire and civil defence authorities);
- passenger transport authorities;
- the Broads Authority;
- National Park authorities;
- the London Fire and Emergency Planning Authority;
- the Greater London Authority;
- the Common Council of the City of London; and
- the Council of the Isles of Scilly.

It also covers police authorities in Wales. However, the Commissioner for Local Administration in Wales handles allegations about members of Welsh police authorities. For this reason, references to the Ethical Standards Officer (ESO) within this guide should be read as the Commissioner for Local Administration in Wales, and references to The Adjudication Panel for England should be read as The Adjudication Panel for Wales.



### **Introduction**

Under the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003*, Ethical Standards Officers (ESOs) can refer completed investigation reports to monitoring officers for Standards Committees to determine (decide) whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.

Standards Committees should be familiar with the regulations and have effective procedures in place to make sure that they can determine cases fairly and consistently.

The process for dealing with matters at a local level should be the same for all members, no matter what political party they represent or what level of local government they represent. Standards Committees of district and unitary authorities fulfil the same role in relation to parish and town councils in their area. In this case, Standards Committees can set up sub-committees to deal with town and parish council matters.

Standards Committees only have the power to determine whether or not a member has failed to follow the Code of Conduct following a referral from an ESO. If someone makes an allegation about a member's conduct direct to the authority, it should refer the matter to The Standards Board for England for consideration, provided the person making the allegation has not done so already. If The Standards Board for England does not refer an allegation to an ESO for investigation, the Standards Committee of the authority involved may still want to consider whether general lessons can be learnt from the allegation or incident.

A decision by The Standards Board for England not to refer a matter for investigation does not prevent the Monitoring Officer having an informal discussion with the member concerned about the incident that gave rise to the allegation and how similar incidents might be avoided in future.

**Please note that the local determination regulations do not cover investigations at a local level. The Office of the Deputy Prime Minister plans to issue more regulations to provide a framework for ESOs to refer matters to monitoring officers for investigation.**

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

**The local determination process**

The main purpose of the Standards Committee's hearing is to decide whether or not a member has failed to follow the authority's Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.

This section provides practical procedural information for Standards Committees on how to prepare for and hold a hearing and tell the relevant people of the decision.

**ESO referrals**

The Standards Board for England carefully assesses all the allegations that it receives. It considers, among other things, the seriousness of the allegation and makes a judgement as to whether or not the allegation should be investigated. If The Standards Board for England believes an investigation is needed, it will pass the matter to an ESO.

ESOs work for The Standards Board for England but their responsibilities and powers are set out in the *Local Government Act 2000*. Neither The Standards Board for England nor the Government can interfere with an investigation by an ESO.

An ESO will investigate an allegation referred by The Standards Board for England to decide which of the following four findings is appropriate in the circumstances:

- 1 there is no evidence that the member has failed to follow any part of the Code of Conduct;
- 2 no action needs to be taken in relation to the matters investigated;
- 3 the matter should be referred to the Monitoring Officer of the relevant authority for local determination; or
- 4 the matter should be referred to The Adjudication Panel for England.

What will ESOs refer?

Matters that the ESO is likely to refer for local determination include:

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- matters that are of an entirely local nature and do not affect broader national issues; and
- matters that do not appear to need the heavier penalties available to The Adjudication Panel for England.

However, ESOs will refer matters on a case-by-case basis as all the relevant circumstances will need to be considered. An ESO is unlikely to refer a case where it would be difficult or inappropriate to try to resolve it locally, for example, if there is an allegation that serious bullying and harassment has taken place in the authority.

When an ESO refers a matter to the Monitoring Officer of the relevant authority, the Monitoring Officer must arrange for the authority's Standards Committee to consider the ESO's report and determine the matter.

Under the local determination regulations, an ESO will only refer a matter to a Standards Committee after completing his or her investigation. Standards Committees should not re-open the investigation. However, the member who the allegation has been made about has the right to give relevant evidence to the Standards Committee and, if more evidence becomes available after the completion of the ESO's investigation, the Standards Committee may consider that evidence during the course of its hearing.

#### **Timing of the Standards Committee hearing**

The Standards Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the ESO's report.

When the Monitoring Officer receives a report, he or she must give a copy of that report to the member who the allegation has been made about.

Normally, hearings should take place at least 14 days after the member who the allegation has been made about receives a copy of the ESO's report from the Monitoring Officer. However, the hearing can be held less than 14 days after the member receives a copy of the ESO's report if the member agrees.

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

If the member who the allegation has been made about does not go to the hearing, the Standards Committee may consider the ESO's report in the member's absence. If the Standards Committee is satisfied with the member's reason 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 ESO's report, the committee will be failing in its legal duty and may face judicial review proceedings. The committee cannot refer the matter back to The Standards Board for England.

**Scheduling a hearing**

Except in 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, committees should bear in mind that late-night hearings are not ideal for effective decision-making.

**The pre-hearing process**

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any of the findings of fact in the ESO's report;
- decide whether or not those disagreements are significant to the hearing;
- decide whether or not to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearing that should be held in private; and
- decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

It is important for everyone involved to recognise that the pre-hearing process will only deal with procedural issues.

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#### Format

The pre-hearing process should usually be carried out in writing, although occasionally a face-to-face meeting between the Chair, the people involved and their representatives may be necessary.

#### The member's response

The officer providing administrative support to the Standards Committee, in consultation with the Chair of the committee, should write to the member concerned to propose a date for the hearing, outline the hearing procedure and the member's rights. They should also ask for a written response from the member, within a set time, to find out whether or not he or she:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person;
- 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 ESO's report or other relevant documents to be withheld from the public; and
- can come to the hearing.

We recommend that Standards Committees ask members to make clear all the disagreements with the findings of fact in the ESO's report during this pre-hearing process. This will allow the committee to decide what witnesses will be needed. Standards Committees should not allow members to raise new disagreements over findings of fact in the ESO's report at the hearing unless there are good reasons for doing so, such as new evidence becoming available.

There are model forms to help the member respond to the Standards Committee in Appendix 1. These include forms to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence for the Standards Committee (Form B).

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

**The ESO's response**

The Standards Board for England recommends that the Standards Committee also invites the relevant ESO to comment on the member's response, within a set time, to say whether or not he or she:

- wants to be represented at the hearing;
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private; and
- wants any part of the ESO's report or other relevant documents to be withheld from the public.

**Other witnesses**

The Standards Committee may also arrange for any other witnesses to be present who it feels may help in determining the case, including the person who made the original allegation. However, the committee cannot order witnesses to appear or give evidence.

**The pre-hearing process summary**

When the Standards Committee has received a response from the member concerned and the ESO, the Chair of the Standards Committee, in consultation with the legal advisor to the committee, should then write to everyone involved at least two weeks before the hearing to:

- 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 member concerned or the ESO will go to or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

There is a checklist for this pre-hearing process summary document in Appendix 1 (Form F).

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### **The hearing**

Standards Committees should work fairly and in a way that encourages the confidence of members and the public. The model hearing procedures (in Appendix 2) are intended to give Standards Committees a consistent approach to determining matters locally. The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

### **The Standards Committee**

Under current law, a Standards Committee may not delegate (allocate responsibility for) determination of a case to a sub-committee. However, a case relating to a town or parish councillor can be delegated to a sub-committee which has been set up to deal with town and parish council matters. All members of the Standards Committee may take part in a hearing if they choose. However, we recommend that a small number of members (three or five) take part in the determination as it is fairer and more efficient to hold a hearing before a small group.

Proposed amendments in the Local Government Bill, which is currently before Parliament, will allow Standards Committees to formally delegate responsibility for local determinations to a sub-committee.

Currently, at least three members of the Standards Committee, including at least one who is an independent member of the committee, must be present at each meeting. If a case relates to a parish councillor, one of the committee members present must be a parish councillor.

If the proposed amendments in the Local Government Bill come into force, we recommend that the Standards Committee sets up a panel of three or five members to make determinations on cases of misconduct.

When it is determining a case, the Standards Committee should be recognised as truly fair and politically unbiased, so that members of the public and members of the authority have confidence in its procedures and findings.

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

To encourage confidence and remove any perception of political interference, we recommend that one of the independent members of the Standards Committee chairs the hearing.

**Representatives**

The member who the allegation has been made about may choose to be represented by counsel or a solicitor, or any other person they wish. If the member concerned wants to have a non-legal representative, the member must tell the Standards Committee in advance. The Standards Committee should normally give permission for members to be represented by a person they choose, but may refuse permission if the representative is directly involved in the matter being determined.

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.

**Witnesses**

Although the member who the allegation has been made about is entitled to call any witnesses he or she wants, the Standards Committee may limit the number of witnesses if it believes the number called is unreasonable.

The Standards Committee also has the right to govern its own procedures as long as it acts fairly. For this reason, the Standards Committee may choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Standards Committee to reach its decision.

**Evidence**

The Standards Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned.

The member who the allegation has been made about must be allowed to make representations, either verbally or in writing. If the member prefers, these representations can be made through his or her nominated

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representative. The member who the allegation has been made about must also be given the opportunity to give evidence to the Standards Committee and call witnesses to give evidence.

In many cases, the Standards Committee may not need to consider any evidence other than the ESO's report. If more evidence is needed or if people do not agree with certain findings of fact in the ESO's report, the Standards Committee may need to hear from witnesses.

The Standards Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the member who the allegation has been made about or the ESO or their representatives. The Standards Committee can ask that these questions be directed through the Chair.

**The finding of the Standards Committee**

Following its hearing, the Standards Committee can make one of the following findings:

- the member has not failed to follow the authority's Code of Conduct;
- the member has failed to follow the authority's Code of Conduct, but no action needs to be taken; or
- the member has failed to follow the authority's Code of Conduct and should be penalised.

**Penalties**

If the Standards Committee finds that a member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority;
  - restrict the member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
  - suspend or partly suspend the member for up to three months; or
  - suspend or partly suspend the member for up to three months on the
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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the Standards Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee.

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

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

**Deciding a penalty**

When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what penalty to set, the Standards Committee should consider the following questions, along with any other relevant circumstances.

- What was the member's intention? Did the member know that he or she was failing to follow the Code of Conduct?
  - Did the member get advice from officers before the incident? Was that advice acted on 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?
  - How serious was the incident?
  - Does the member accept he or she was at fault?
  - Did the member apologise to the relevant people?
-

- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same thing again?

So, for example, if a member has repeatedly or blatantly misused the authority's information technology resources, the Standards Committee may consider withdrawing those resources from the member.

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

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

Penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a member's ability to carry out his or her responsibilities as an elected representative or co-opted member.

There may be other factors, specific to the local environment, that the Standards Committee may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Standards Committee may want to consider decisions made by other Standards Committees and case tribunals drawn from The Adjudication Panel for England that deal with similar types of cases. To help Standards Committees, we will put appropriate summaries of Standards Committee decisions on our website at [www.standardsboard.co.uk](http://www.standardsboard.co.uk)

#### **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 committee will normally also draft minutes of the meeting.

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

As soon as is reasonably practical after the hearing, the Standards Committee must give its full written decision to the relevant people. We recommend that the Standards Committee give its full written decision to those people within two weeks. The relevant people include:

- the member who is the subject of the finding;
- the ESO concerned;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

**Making the findings public**

The Standards Committee must also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

If the Standards Committee finds that a member did not fail to follow the authority's Code of Conduct, the public summary must say this, and give reasons for this finding. In these cases, the member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.

If the Standards Committee finds that a member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the member failed to follow the Code, outline what happened and give reasons for the Standards Committee's decision not to take any action.

If the Standards Committee finds that a member failed to follow the Code and it sets a penalty, the public summary must say that the member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Standards Committee.

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

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**Full written decision format**

For consistency and thoroughness, we recommend that the Standards Committee use the following format for its full written decision. A model format for the full written decision is available on our website at [www.standardsboard.co.uk](http://www.standardsboard.co.uk)

The front cover of the Standards Committee's full written decision should include:

- the name of the authority;
- the name of the member who the allegation has been made about;
- the name of the person who made the original allegation (unless there are good reasons for keeping his or her identity confidential);
- case reference numbers of the principal authority and The Standards Board for England;
- the name of the Standards Committee member who chaired the hearing;
- the names of the Standards Committee members who took part in the hearing;
- the name of the Monitoring Officer;
- the name of the ESO who referred the matter;
- the name of the clerk of the hearing or other administrative officer;
- the date of the hearing; and
- the date of the report.

The Standards Committee's full written decision should include:

- a summary of the allegation;
  - 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 or not the member failed to follow the Code of Conduct, including the reasons for that finding;
  - the penalties applied, if any, including the reasons for any penalties; and
  - the right to appeal.
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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

**Public access to hearings and documents**

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair.

**Confidential information and 'exempt information'**

The regulations state that a modified version of the rules about access to information contained in Part VA of the *Local Government Act 1972* should apply to Standards Committees making local determinations. This means that there is a clear presumption that hearings should be held in public. There are two circumstances in which hearings (or parts of hearings) can or should be held in private.

- 1 A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
- 2 The law also gives the Standards Committee the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the *Local Government Act 1972* (see Appendix 3). However, the regulations also provide for four other categories of 'exempt information'.
  - a Information relating to the personal circumstances of any person.
  - b Information which must be kept confidential, for example, under a contract.
  - c Information relating to national security.
  - d The deliberations of the Standards Committee when hearing matters referred by an ESO.

The rules about confidential information are different from the rules about 'exempt information'. Standards Committees must hold some parts of a

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meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

Deciding to withhold 'exempt information'  
Standards Committees should carefully consider any decision to withhold exempt information from the public. Although the legal position is not entirely clear, The Standards Board for England advises that Standards Committees should follow Article 6 of the *European Convention on Human Rights*, as there may be an obligation to do so under Section 6(1) of the *Human Rights Act 1998*. But, in any case, the Standards Committee has a duty to act fairly and in line with the rules of natural justice.

Please note that Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved. Article 6 is discussed in Appendix 4.

If a Standards Committee decides to exclude the public to prevent 'exempt information' being revealed, it should only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt information', the public will only have to be excluded while that witness is giving evidence.

If evidence is heard in private, people should be warned not to mention that evidence during the public parts of the hearing, or outside the hearing. The Standards Committee may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

#### Access to documents

The statutory rules about access to information which apply to Standards Committees do not simply relate to public attendance at hearings. They also establish the general principle that the agenda and reports to be discussed should be available for public inspection before and during a hearing. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, must be available for public inspection for a

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

specific period of up to six years after that hearing has taken place. The ESO's report will be one of the reports before the Standards Committee.

The regulations also state that the agenda, reports and minutes of district and unitary authority Standards Committee meetings must be sent to any parish councils involved.

Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However, an officer appointed by the authority has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private. The Standards Board for England recommends that this power should be exercised where one of the people involved has requested that a document be kept confidential.

After a hearing, sections of the committee's reports which relate to parts of the hearing held in private will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.

When considering whether to exclude the public from a hearing, the Standards Committee will also need to say which parts of the reports before the committee are not to be made available for public inspection.

**Appeals to The Adjudication Panel for England**

The member who is the subject of a Standards Committee finding may apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding. Please see page 48 for contact details.

The President must receive the member's written application within 21 days of the member receiving notice of the Standards Committee's decision. In this application, the member must outline the reasons for the proposed appeal and whether or not he or she wants the appeal carried out in writing or in person.

When deciding whether or not to grant permission to appeal, the President will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or in part.

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The President will give the member concerned his or her written decision within 21 days of receiving the application. The President will also give his or her written decision to:

- the ESO concerned;
- the Standards Committee that made the original finding;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

If the President refuses to give permission, he or she will explain the reasons for that decision.

#### **Appeal tribunals**

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

Any member of The Adjudication Panel for England with an interest in the matter may not be a member of the appeal tribunal. Likewise, any member of The Adjudication Panel for England who has been a member or officer of the authority concerned within the last five years cannot take part.

If the member does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the member at least 21 days' notice of the date of the hearing.

The member can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the member wants to have a non-legal representative, the member must get permission from the tribunal beforehand, who may prevent that person acting as a representative if he or she is directly involved in the case.

The appeal tribunal can decide its own procedures. It is likely, however, that both the ESO and the Standards Committee will be given the opportunity to make representations in relation to the appeal and, in an appropriate case, to go to or be represented at the appeal hearing.

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**Standards Committee determinations**

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

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

**Outcome of the appeal**

The appeal tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the Standards Committee.

If the tribunal upholds the Standards Committee's finding, or part of the finding, it may:

- approve the penalty set by the Standards Committee;
- require the Standards Committee to set a penalty if it has not already done so; or
- require the Standards Committee to set a different penalty to that already set.

If the tribunal dismisses the finding of the Standards Committee, the decision and any resulting penalty will no longer apply. The Standards Committee must act on any directions given by the appeal tribunal.

**Notice of the appeal tribunal's decision**

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

- the member who is the subject of the decision;
  - the ESO concerned;
  - the Standards Committee that made the original finding;
  - the Standards Committees of any other authorities concerned;
  - any parish councils concerned; and
  - any person who made the allegation.
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The tribunal will also publish a summary of its decision in one or more of the newspapers circulating in the area of the authorities concerned.

**Costs**

Members are responsible for meeting the cost of any representation at a Standards Committee hearing or appeal tribunal.

The Office of the Deputy Prime Minister is looking into allowing authorities to cover the costs of members going to and being represented at hearings and appeal tribunals.

**The role of the Monitoring Officer**

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

**Advising the Standards Committee**

It is important that Standards Committees receive high quality, independent advice. For this reason, we recommend that a Monitoring Officer should be the main advisor 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.

In advising the Standards Committee, the Monitoring Officer or other legal advisor's role 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 allegation to be dealt with as efficiently and effectively as possible;
  - make sure that the member who the allegation has been made about understands the procedures the Standards Committee will follow;
  - provide advice to the Standards Committee during the hearing and their deliberations; and
  - help the Standards Committee produce a written decision and a summary of that decision.
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**Standards Committee determinations**

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**Advising members**

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.

We recommend that monitoring officers consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise members; or
- continuing to advise members, identifying possible scenarios that may lead to future conflicts, and reassuring themselves that if their advice could be material to an investigation, they have another appropriately experienced officer who is prepared to support the Standards Committee in its hearings and deliberations.

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

**For more information**

For more information about this guide or about The Standards Board for England more generally, please contact us on 0845 078 8181 or e-mail [enquiries@standardsboard.co.uk](mailto:enquiries@standardsboard.co.uk). Or, please visit our website at [www.standardsboard.co.uk](http://www.standardsboard.co.uk)

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## **APPENDIX 1**

### **Model documentation for the pre-hearing process**

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any findings of fact in the ESO's report;
- decide whether those disagreements are significant to the hearing;
- decide whether to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearings that should be held in private; and
- decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

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

#### **Pre-hearing process checklist for authorities**

The Monitoring Officer must give a copy of the ESO's referred report to the member who the allegation has been made about.

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 member who the allegation has been made about;
  - outline the member's rights and responsibilities;
  - propose a date for the hearing;
  - ask for a written response from the member by a set time to find out whether he or she:
    - disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
-

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- wants to be represented at the hearing by a solicitor, barrister or any other person, noting that 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;
- 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;
- can come to the hearing on the proposed date;
- wants any part of the hearing to be held in private; and
- wants any part of the ESO's report or other relevant documents to be withheld from the public;
- send a copy of the member's response to the ESO and invite the ESO to say by a set time whether he or she:
  - wants to be represented at the hearing;
  - 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 ESO's report or other relevant documents to be withheld from the public; and
  - wants to invite any other witnesses the committee feels are appropriate.

The Chair of the committee, in consultation with the legal advisor 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; and
  - 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 member who the allegation has been made about is aware of the following points.

#### **Pre-hearing process**

The member concerned has the right to:

- go to the hearing and present his or her case;
- call a reasonable number of witnesses to give relevant evidence to the Standards Committee; and
- be represented at the hearing by a solicitor, barrister or any other person, noting that 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 findings of fact in the ESO's 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 member does not have to go to the hearing or be represented. If the member chooses not to go to the hearing, the committee may make a determination in his or her 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 good reason to exclude the public, 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 or not the member has failed to follow the Code of Conduct and whether or not

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a penalty should be set. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the Standards Committee will give the member concerned its full written decision within two weeks of the end of the hearing.

If the Standards Committee decides that the member has failed to follow the Code of Conduct and that the member should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority;
- restrict the member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the member for up to three months; or
- suspend or partly suspend the member for up to three months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the Standards Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee.

Penalties may start immediately or up to six months after the hearing, if the Standards Committee wishes.

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

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

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**Pre-hearing process forms**

These forms are a guide only. Authorities should prepare their own forms as appropriate.

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

Form B helps the member set out any other evidence that is relevant to the allegation.

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

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

Form F is a checklist of what should be included in the pre-hearing process summary.

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

**FORM A**

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

Paragraph number from the ESO's report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

Please attach separate sheets if necessary.

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**FORM B**

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

**Other evidence relevant to the allegation**

Paragraph number	Details of the evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary



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**FORM C**

Please set out below, using the numbered paragraphs, any factors that the Standards Committee should take into account if it finds that a member has failed to follow the Code of Conduct.  
Please note that no such finding has been made yet.

**Representations to be taken into account if a member is found to have failed to follow the Code of Conduct**

Paragraph number	Factors for the Standards Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	
4	
5	

Please attach separate sheets if necessary

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**FORM D**

**Arrangements for the Standards Committee hearing**

Please tick the relevant boxes.

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

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

Please attach separate sheets if necessary.

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**FORM E**

**Details of proposed witnesses to be called**

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

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

Please attach separate sheets if necessary.

**Standards Committee determinations**

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**FORM F**

**Checklist for the pre-hearing process summary**

After the Standards Committee has received responses from the member who the allegation has been made about and the ESO, 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 member who the allegation has been made about;
  - the name of the person who made the original allegation (unless there are good reasons to keep his or her identity confidential);
  - case reference numbers of the principal authority and 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 ESO who referred the matter;
  - 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 allegation;
  - the relevant section or sections of the Code of Conduct;
  - the findings of fact in the ESO's report that are agreed;
  - the findings of fact in the ESO's report that are not agreed;
  - whether or not the member or the ESO will attend or be represented;
  - the names of any witnesses who will be asked to give evidence; and
  - an outline of the proposed procedure for the hearing.
-

## **APPENDIX 2**

### **Model hearing procedures for the Standards Committee**

The Standards Committee needs to have an efficient and effective hearing process. This will help the committee to 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.

These model procedures are intended to give Standards Committees a consistent approach to determining matters locally. They are based on a model developed by Peter Keith-Lucas of Wragge and Co Solicitors.

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

#### **Interpretation**

- 1 '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 Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.
  - 3 'Committee' also refers to 'a standards sub-committee'.
  - 4 'Legal advisor' 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.
-

**Standards Committee determinations**

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**Representation**

- 5 The 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 from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the 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 or not 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 member an opportunity to challenge any evidence put forward by any witness called by the investigator.
-



- 12 The member should then have the opportunity to make representations to support his or her 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 of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
  - 14 If the 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 member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:
    - a continue with the hearing, relying on the information in the investigator's report;
    - b allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
    - c postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is 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.
-

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**Did the member fail to follow the Code?**

- 18 The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.
- 19 The member should be invited to give relevant reasons why the committee should not decide that he or she has 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 in their representations.
- 22 The 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 or not the member has failed to follow the Code of Conduct.

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

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

**If the member has failed to follow the Code**

- 26 If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:
    - a whether or not the committee should set a penalty; and
    - b what form any penalty 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 move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.

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

**Recommendations to the authority**

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

**The written decision**

31 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.

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**Standards Committee determinations**

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**APPENDIX 3**

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

- 1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
  - 2 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:
    - a a magistrates' court committee;
    - b a probation committee within the meaning of the *Probation Service Act 1993*; or
    - c a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
  - 2A Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
  - 3 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
  - 4 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
  - 5 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
  - 6 Information relating to the adoption, care, fostering or education of any particular child.
-

- 7 Information relating to the financial or business affairs of any particular person (other than the authority).
  - 8 The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
  - 9 Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
  - 10 The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.
  - 11 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
  - 12 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:
    - a any legal proceedings by or against the authority; or
    - b the determination of any matter, affecting the authority.(whether in either case, proceedings have been commenced or are in contemplation).
  - 13 Information which, if disclosed to the public, would reveal that the authority proposes:
    - a to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
    - b to make an order or direction under any enactment.
  - 14 Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
-

**Standards Committee determinations**

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- 15 The identity of a protected informant.
- 16 Information relating to the personal circumstances of any person.
- 17 Information which is subject to any obligation of confidentiality.
- 18 Information which relates in any way to matters concerning national security.
- 19 The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part III of the *Local Government Act 2000* in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the *Local Government Act 2000*.

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

Please note that Plain English Campaign's Crystal Mark does not apply to Appendix 3.

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## **APPENDIX 4**

### **Excluding the public from hearings**

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

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

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



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

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

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

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**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

**Contact information**

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## STANDARDS COMMITTEE

30 JULY 2003

**CONTRIBUTORS**  
**(PAD)**

**Revised Guidance for Members on  
Registering & Declaring Interests, Gifts &  
Hospitality**

**WARDS**  
**All**

The Standards Board for England has revised (May 2003) their original Guidance on registering and declaring interests, gifts and hospitality in order to clarify definitions and make the process easier for members to understand.


All members were sent a copy of the original Guidance when it was first issued, and the revised Guidance will be promulgated via this agenda and on public folders for information.

### **RECOMMENDATION:**

1. **That the Committee note the revised Guidance issued by the Standards Board for England.**

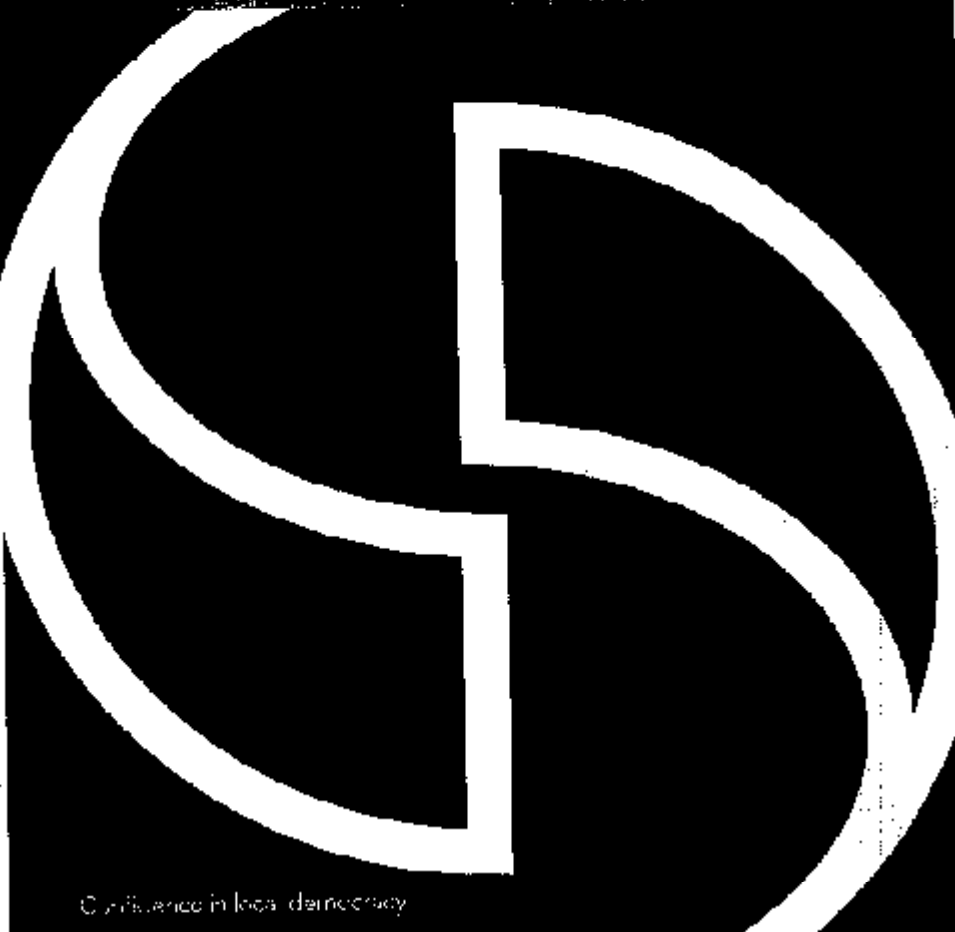
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May 2002



the  
**Standards Board**  
for England

**How do I register and declare interests,  
and register gifts and hospitality?**  
Local authorities



Confidence in local democracy

**How do I register and declare interests, and register gifts and hospitality?**  
Local authorities

### Introduction

This guide explains how to register and declare interests, and how to register gifts and hospitality, under the *Local Government Act 2000* and the Model Code of Conduct. It's for members of district, unitary, metropolitan, county and London borough councils, as well as the members of the Greater London Authority, the Common Council of the City of London and the Council of the Isles of Scilly. In this guide, the term 'member' refers to elected members and co-opted members. (A co-opted member is a person who is not a member of the authority but who sits on one of the authority's committees and can vote in those meetings.)

You must register your interests with your Monitoring Officer and declare any relevant interests you have in meetings or when making and recording decisions. You also need to give your Monitoring Officer details of any gifts and hospitality worth more than £25 that you receive in connection with your official duties as a member. (This does not include gifts and hospitality you receive which are not related to your role as a member, for example, Christmas gifts from friends and family.)

This guide only deals with the rules contained in the Model Code of Conduct. You should talk to your Monitoring Officer about any extra provisions in your authority's code of conduct.



**Registering interests****What interests do I need to register?**

You need to register any interests listed in part 3 of the Model Code of Conduct. These interests cover both financial and other interests. The information you need to provide is listed below.

**Financial interests**

- Your job and your businesses.
  - The name of your employer, any firm you are a partner of and any company you are a paid director of.
  - The name of any person (other than a relevant authority) who has helped you with expenses associated with your election or your duties as a member.
  - The name of any 'corporate interest'. That is, any corporate body:
    - which has a place of business or land in your authority's area; and
    - in which you have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £25,000 or 1% of the total amount invested in that corporate body by shareholders. (You have a beneficial interest in a type of share if, for example, you own, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that type of share.)
  - A description of any contracts (for goods, services or work) between the authority and you, any firm you are a partner of, any company you are a paid director of, or any of your corporate interests.
  - The address or other description of any land in your authority's area which you have a 'beneficial interest' in. (You have a beneficial interest in land if, for example, you own, you rent, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that land.) The address or other description must be good enough to identify the location. (For example, provide the address, map reference or field number.)
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**How do I register and declare interests, and register gifts and hospitality?**  
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**Registering interests** continued

- The address or other description of any land which any firm you are a partner of, any company you are a paid director of, or any of your corporate interests leases from your authority;
- The address or other description of any land in your authority's area which you (alone or with others) have a licence to occupy for 28 days or more.

**Other interests**

- Your membership of, or position of general control or management in:
  - organisations where you represent your authority;
  - other public authorities or organisations which deliver public services;
  - companies, industrial and provident societies, charities or charitable organisations;
  - organisations with a main purpose which includes influencing public opinion or policy; and
  - trade unions or professional associations.

The Office of the Deputy Prime Minister has said that it does not intend members to register shareholdings beyond those specified in the financial interests section of the Model Code (that is, corporate interests).

You do not need to give the value of any shareholdings or land that you register.

**Why do I need to register my interests?**

You need to register your interests so the public, authority staff, and fellow members know which of your interests might give rise to a conflict of interest. The register is a document which can be consulted when (or before) an issue arises, and lets others think about whether or not you may have a conflict of interest.

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The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a conflict might arise. It is also important for public confidence that people who are interested in your authority's meetings know about any interest that might have to be declared by you or other members.

**How do I register my interests?**

You give your Monitoring Officer written details of any interests you need to register (see above). Your Monitoring Officer may have a form for you to fill in.

**When do I have to register my interests?**

You must register your interests within 28 days of being elected or appointed as a member.

**What should I do if my interests change or I have new interests?**

You should tell your Monitoring Officer about any changes to your interests within 28 days of the change occurring. From time to time your Monitoring Officer may also ask you to confirm or update your list of interests.

**What will the Monitoring Officer do with my list of interests?**

Your Monitoring Officer must keep and update a register of all members' interests.

**Will the register be available to the public?**

Yes, the register must be available to the public at your authority's office at all reasonable hours.



**How do I register and declare interests, and register gifts and hospitality?**  
Local authorities

**Registering interests** continued

**Is there a standard form for the register?**

No, there is no form set by law. Your authority is free to design its own register.

**Declaring interests at meetings**

**When do I need to declare my interests?**

You need to declare your interests at all meetings where the matters being discussed, or to be discussed, affect your interests.

**What interests do I need to declare in a meeting?**

As a first step, you need to declare any **personal interests** you have in a matter. You will then need to decide if you have a **prejudicial interest** in that matter.

**What is a personal interest?**

You have a personal interest in a matter if that matter affects the wellbeing or financial position of you, your relatives or your friends more than it would affect other people in the authority's area. You must look at how any decision reached in a meeting would affect:

- your and their jobs and businesses;
  - your and their employers, firms you or they are a partner of, and companies you or they are a director of;
  - corporate bodies in which you or they have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £5,000; and
  - the following organisations in which you or they hold a position of general control or management.
    - Organisations where you or they represent your authority.
    - Other public authorities or organisations which deliver public services.
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- Companies, industrial and provident societies, charities or charitable organisations.
- Organisations with a main purpose which includes influencing public opinion or policy.
- Trade unions or professional associations.

**Under the Model Code of Conduct:**

- A 'relative' is a partner (someone you are married to or live with as if you were married), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, or the husband, wife or partner of any of these people.
- Other people in the authority's area are people who live in the authority's area, or who pay Council Tax or business rates to your authority.

You need only declare the interests you know about, and you do not need to investigate the business or other interests of your relatives and friends.

A personal interest can affect you, your relatives or your friends positively or negatively. So, if you or they would stand to lose by the decision, you should also declare it.

You also have a **personal interest** in a matter if it relates to any interests you must register.

**What do I need to do if I have a personal interest in a matter?**

You must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to you.

**Do I need to declare a personal interest in a meeting if it is on the register of interests?**

Yes, the Model Code says that even if your interest is shown in the register of interests, you must also declare it in meetings where matters relating to that interest are discussed.

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**How do I register and declare interests, and register gifts and hospitality?**  
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**Declaring interests at meetings** continued

**Can I stay in the meeting if I have a personal interest?**

You can still take part in the meeting and vote on the matter unless your personal interest is also a **prejudicial interest**.

**What is a prejudicial interest?**

A **prejudicial interest** is one which a member of the public who knows the relevant facts would reasonably think is so significant that it is likely to adversely affect your judgement of the public interest.

You must ask yourself whether a member of the public – if he or she knew all the facts – would think that your personal interest was so significant that it would probably adversely affect your decision on the matter. If he or she would think that your judgement would be adversely affected, then you have a prejudicial interest.

You will also have a prejudicial interest if you are involved in an overview and scrutiny committee meeting which is checking a decision taken by another committee which you are a member of. However, you can be called to attend the overview and scrutiny committee meeting to give evidence or answer questions on the matter.

**What is not a prejudicial interest?**

The Model Code of Conduct sets out some types of interest which are not in themselves prejudicial. They are interests arising from:

- you being a member of another local authority;
  - you holding a position of general control or management in another public authority;
  - you representing your authority in an organisation;
  - your authority's functions relating to housing if you hold a tenancy or lease with the authority and are not more than two months behind with your rent (as long as the matter does not relate to your particular tenancy or lease);
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- your authority's functions relating to school meals, transport, and travelling expenses if you are a parent or guardian of a child in full-time education (unless it relates particularly to the school your child attends);
- your authority's functions relating to statutory sick pay if you are receiving this, or are entitled to this, from your authority; or
- your authority's functions relating to members' allowances or payments made under sections 173-176 of the *Local Government Act 1972*, or section 18 of the *Local Government and Housing Act 1989*.

In these situations you will still need to consider whether there are any other factors present that may make the interest prejudicial.

#### **What do I need to do if I have a prejudicial interest?**

If you have a prejudicial interest in a matter being discussed at a meeting, you must declare that you have a prejudicial interest, and the nature of that interest, and then leave the room. You cannot take part in discussions on that matter or try to improperly influence anyone's decision on the matter.

It is important that you leave the room so you and your authority are seen to be acting in an appropriate and unbiased way, and to remove pressure from the remaining members.

#### **What about overview and scrutiny committee meetings?**

If you have a prejudicial interest you can still take part in an overview and scrutiny committee or joint or area committee meeting unless that interest is financial, the committee is checking a decision taken by another committee which you are a member of, or the committee is carrying out the functions of your authority or its executive. (This exemption aims to allow the highest number of people to take part in overview and scrutiny committees or joint or area committees and to allow the committee to benefit from the views of experts in the matters being discussed.)

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**How do I register and declare interests, and register gifts and hospitality?**  
Local authorities

**Declaring interests at meetings** continued

If the overview and scrutiny committee is checking a decision taken by another committee which you are a member of, you can still be called to attend the meeting to give evidence or answer questions on the matter.

**Can I get a 'dispensation' to allow me to take part in meetings where I have a prejudicial interest?**

You can apply to your Standards Committee for a dispensation if:

- over 50% of the authority or committee members would be prevented from taking part in a meeting because of prejudicial interests; or
- the political balance at the meeting would be upset.

If the Standards Committee approves your application, it must grant the dispensation, in writing, before the meeting is held. If you need a dispensation, you should apply for one as soon as reasonably possible.

**What if I'm a member of the executive or cabinet?**

Dispensations are not available to allow individual members of the executive to make decisions on matters they have a prejudicial interest in. If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority will have to make other arrangements as set out in sections 14-18 of the *Local Government Act 2000* (that is, the decision can be delegated to an employee, another cabinet member, the full executive or a committee of the executive).

**Where do I go if I need advice on my interests?**

If you have any questions, speak to your Monitoring Officer:

The flowchart at the end of this document has been designed to help you decide what interests you need to declare and what you must do to declare them.

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**Registering gifts and hospitality****What gifts and hospitality do I need to register?**

You need to register any gifts or hospitality worth over £25 that you receive in connection with your official duties as a member.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family. However, you should always consider whether any gifts or hospitality could be seen as being connected to your role as a member. If you are in doubt, speak to your Monitoring Officer.

You may have to estimate how much a gift or some hospitality is worth. You do not need to register gifts and hospitality you do not accept.

**How do I register gifts and hospitality I receive?**

You must give your Monitoring Officer written details about the gifts and hospitality you receive in connection with your role as a member of the authority.

**When do I have to register them?**

You must register the gift or hospitality within 28 days of receiving it.

**Will the register be open to the public?**

We recommend that the register of gifts and hospitality should be available to the public in the same way as the register of interests. This does not have to be done by law, and the register should only be made available if the members concerned agree to this.

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**Declaring interests – questions to ask yourself**

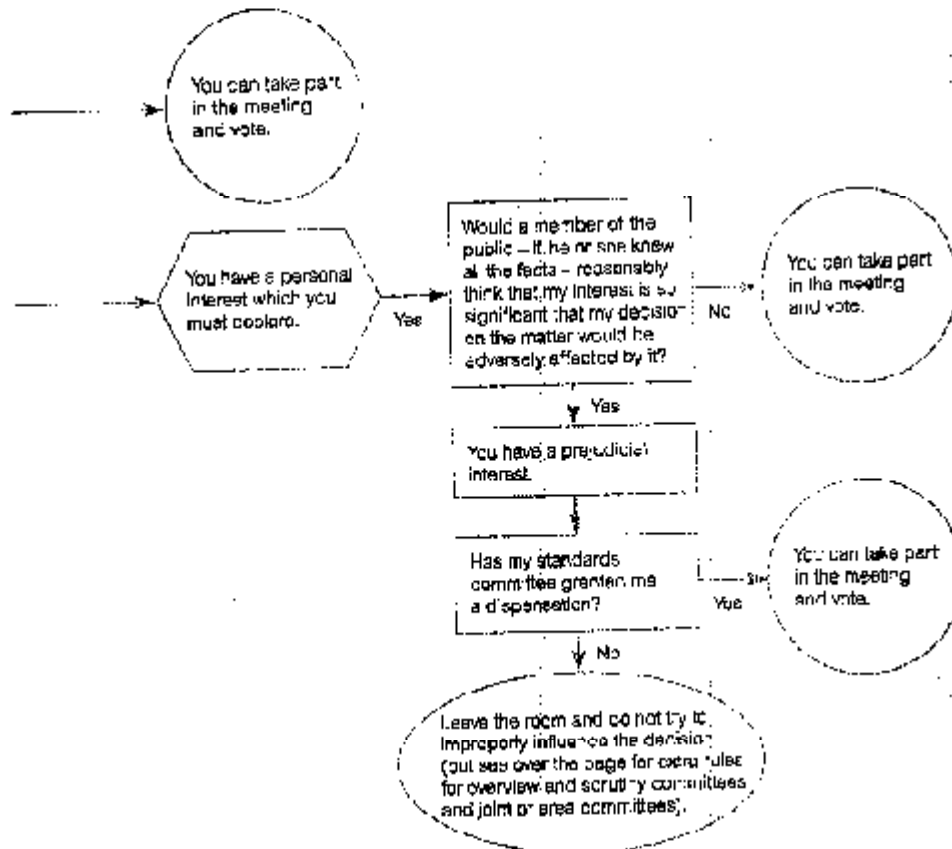
If you are in an overview and scrutiny committee meeting or a joint or area committee meeting, there are extra questions that you must ask yourself. See the flowchart over the page as well as this flowchart.

<p><b>Do I have a personal interest in the matters being discussed at the meeting?</b></p> <ul style="list-style-type: none"> <li>• Does a matter affect the well being or financial position of me, my relatives, or my friends more than it would affect other people in the authority's area? You must look at how the matter would affect the following:             <ul style="list-style-type: none"> <li>• You or their jobs and businesses.</li> <li>• You or their employers, firms where you or they are a partner, or companies where you or they are a director.</li> <li>• Corporate bodies in which you or they have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £5,000. (You have a beneficial interest in a type of share if, for example, you own, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that type of share.)</li> <li>• The following organisations in which you or they hold a position of general control or management:                 <ul style="list-style-type: none"> <li>- Organisations where you or they represent the authority;</li> <li>- Other public authorities or organisations delivering public services;</li> <li>- Companies, industrial and provident societies, charities or charitable organisations;</li> <li>- Organisations with a main purpose which includes influencing public opinion or policy;</li> <li>- Trade unions or professional associations.</li> </ul> </li> </ul> </li> <li>• Does it relate to any of the interests that must register under part 3 of the Code?</li> </ul>	<p>No</p> <hr/> <p>Yes</p>
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**Register of interests – things I must register**

- My job and businesses.
- The name of my employer, any firm I am a partner of and any company I am a paid director of.
- The name of any person (other than a local authority) who has helped me with expenses associated with my election or my duties as a member.
- The name of any 'corporate interests'. That is, any corporate body:
  - which has a place of business or land in my authority's area; and
  - in which I have a 'beneficial interest' in a type of share with a face value (as shown on the share certificate) of more than £25,000 or 1% of the total amount invested in that corporate body by shareholders. (You have a beneficial interest in a type of share if, for example, you own, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that type of share.)
- A description of any contracts (for goods, services or work) between the authority and me, any firm I am a partner of, any company I am a paid director of, or any of my corporate interests.
- The address or other description of any land in my authority's area which I have a beneficial interest in. (You have a beneficial interest in land if, for example, you own, you rent, you are entitled to the proceeds of, or you may, under a trust, become entitled to the proceeds of that land.)
- The address or other description of any land which any firm I am a partner of, any company I am a paid director of, or any of my corporate interests leases from my authority.
- The address or other description of any land in my authority's area which I (alone or with others) have a licence to occupy for 28 days or more.
- My membership of, or position of general control or management in:
  - organisations where I represent my authority;
  - other public authorities or organisations which deliver public services;
  - companies, industrial and provident societies, charities or charitable organisations;
  - organisations with a main purpose which includes influencing public opinion or policy; and
  - trade unions or professional associations.

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#### Interests which are not in themselves prejudicial

You may not have a prejudicial interest if the matter relates to:

- another local authority which you are a member of;
- another public authority in which you hold a position of general control or management;
- an organisation where you represent your authority;
- your authority's functions relating to housing if you hold a tenancy or lease with the authority and are not more than two months behind with your rent (as long as the matter does not relate to your particular tenancy or lease);
- your authority's functions relating to school meals, transport and travelling expenses if you are a parent or guardian of a child in full-time education (unless it relates particularly to the school your child attends);
- your authority's functions relating to statutory sick pay if you are receiving, or are entitled to, this from your authority; or
- your authority's functions relating to members' allowances or payments made under sections 173-176 of the *Local Government Act 1972* or section 18 of the *Local Government and Housing Act 1989*.

In these situations you will still need to consider whether there are any other factors present that may make the interest prejudicial.



**Overview and scrutiny committee and joint or area committee meetings  
- questions to ask yourself**

