

READING BOROUGH COUNCIL  
REPORT BY MONITORING OFFICER

TO:	STANDARDS COMMITTEE		
DATE:	17 JULY 2007	AGENDA ITEM:	2
TITLE:	TERMS OF REFERENCE AND ANNUAL REPORT		
LEAD COUNCILLOR:	CLLR T JONES	PORTFOLIO:	
SERVICE:	CENTRAL ADMINISTRATION	WARDS:	BOROUGH-WIDE
LEAD OFFICER:	JOHN PAINTER	TEL:	0118 939 0797 / 2797
JOB TITLE:	HEAD OF CENTRAL ADMINISTRATION	E-MAIL:	<a href="mailto:John.Painter@reading.gov.uk">John.Painter@reading.gov.uk</a>

**1. PURPOSE AND SUMMARY OF REPORT**

- 1.1 To set out the Committee's terms of reference and constitutional role for the Municipal Year 2007/08, to update the Committee on developments and complaints during the 2006/07 Municipal Year, and to look forward to the current Municipal Year.
- 1.2 To draw attention to the new Model Code of Conduct for Members as issued by the Government, for adoption by all local authorities by 1 October 2007, and to invite the Committee to recommend a new Reading Code, based on the Model Code, to full Council for formal adoption, and to commission me to hold training sessions for all Councillors in the new Code of Conduct, during the autumn.
- 1.3 To welcome two new independent Members to the Committee, to join Ms Lee, and to recommend their appointment to full Council.
- 1.4 Your attention is drawn to the following relevant parts of the Council's constitution and other documents are attached:
  - A: Article 9 - The Standards Committee (page 11)
  - B: Part 5 - Local Determination (page 15)
  - C: Part 5 - Local Investigation of Referred Complaints (page 23)
  - D: Part 5 - Code of Conduct for Members - revised Reading document (p. 40)
  - E: Consultation on Amendments to the Model Code of Conduct for Local Authority Members - the Council's Response (March 2007) (page 50)
  - F: List of Gifts / Hospitality Registered by Councillors 2006/07 (page 56)
- 1.5 Over the past Municipal Year there have been no findings of breaches of the Code of Conduct by Members of the Council.

## 2. RECOMMENDED ACTION

- 2.1 That the Committee's terms of reference and constitutional role be noted;
- 2.2 That the revised Reading Code of Conduct for Members, based on the new Model Code, be agreed and recommended to full Council for formal adoption, and that in this respect:
  - a) the new Reading Code be used as the Council's working document in advance of its formal adoption, and the Monitoring Officer notify all Councillors of this;
  - b) following its formal adoption by full Council (on 16 October 2007), the Monitoring Officer to write to all Councillors and other Members to require them to sign to confirm that they will abide by the new Code;
  - c) the Monitoring Officer to hold training sessions for all Councillors on the new Code, and the Group Leaders to be asked to ensure that all Councillors elected before 2007 attend such a course.
- 2.3 That the appointment of Mr John Hicks and the Rev. Canon Brian Shenton as independent Members of the Committee be approved, and recommended to full Council on 16 October 2007;
- 2.4 That the list of gifts and hospitality registered by Members in the financial year 2006/07 be received.

## 3. POLICY CONTEXT

- 3.1 Standards and conduct are a key theme in the Modernisation agenda for local government, and are specifically addressed by Part III of the Local Government Act 2000. At the heart of the standards regime is the National Code of Conduct for Members, which the Council adopted in April 2002.
- 3.2 Responsibility for enforcing compliance with the code currently is split between, at the national level, the Standards Board for England and the Ethical Standards Officers (ESOs) appointed by it to investigate all allegations made to it, and the National Adjudication Board, which hears those allegations where the Standards Board believes there is a case to answer; and at the local level the Standards Committees and Monitoring Officers (MOs) of individual authorities.
- 3.3 In 2003, the Government introduced Regulations which extended to Standards Committees the ability to adjudicate on certain allegations investigated by Ethical Standards Officers. As a result the Committee, on 10 February 2004, considered and agreed a new procedure for local hearings, under the provisions of the Local Authorities Code of Conduct (Local Determination) Regulation 2003/4. These regulations apply to situations where the ESO has investigated a complaint, and then submits his/her report to the Council for consideration.

3.4 In 2004 the Government (ODPM) introduced new Regulations which allow the ESO to hand over the investigation of minor breaches of the Code of Conduct to the Council's Monitoring Officer (MO). The ODPM saw this as completing the standards regime in England. During 2005 the Committee considered and endorsed a procedure for the local investigation of such referred complaints, subject to amendments, which was adopted by full Council at the Annual Meeting on 18 May 2005.

#### 4. ROLE OF STANDARDS COMMITTEE AND TERMS OF REFERENCE

4.1 The terms of reference and constitutional and operational arrangements for the Committee are set out in **Appendix A**. It is important to note that the membership of the committee includes both Councillors and independent Members, and that the independent Members must make up one quarter of the committee's membership.

4.2 The Committee's procedure for considering cases referred to it by the Standards Board for local determination is attached at **Appendix B**. In such cases the Committee will set up a sub-committee to hear and determine the case, which must be chaired by an independent Member.

4.3 The Committee's procedure for investigating complaints referred to the Monitoring Officer by an ESO for local investigation is attached at **Appendix C**. In such cases the result of the investigation will be reported to the Committee which will meet to consider whether or not a hearing should be held. If a hearing is held then the Local Determination procedure will be followed.

4.4 In investigating and determining cases, the test that must be applied by the Standards Board and the National Adjudication Panel, and by the Committee, is whether there has been a breach of the Code of Conduct. The Council's Code of Conduct for Members, which is based on the new Model Code, is attached at **Appendix D**.

##### Committee Membership

4.5 For the past four years the Committee's independent Members have been Frank Stroud and Angie Lee MBE. Mr Stroud submitted his resignation from the Committee in March 2007, with effect from the new Municipal Year. I ran a recruitment process to replace Mr Stroud during May / June 2007, and as a consequence two new independent Members are recommended to the Committee for appointment by full Council. They are:

John Hicks

Self-employed management consultant and former Head of Cultural and Heritage Services at Berkshire County Council

Rev Canon Brian Shenton

Rector & Vicar of Reading Minster and St Laurence Reading

4.7 There is no limit to the number of independent Members that can be on the Committee, with a minimum of one quarter. The following constraints, however, apply to independent members:

- Must not have been a member or employee of the Council within five years of the date of appointment
- Must not be a relative or close friend of a Member or employee of the Council

4.8 In addition, independent Members must have filled in an application for the position, following an advertisement placed in at least one local newspaper, and must have been approved by the majority of members of the Committee. The Standards Board suggest that independent Members should:

- Be familiar with ethical dilemmas
- Have experience with committee work
- Have questioning skills
- Be assertive
- Be independent of any political party, and local government

4.9 The recruitment process to fill Mr Stroud's vacancy involved placing advertisements in the Reading Evening Post and Reading Chronicle, and also on the Council's website. Five applications were received. These were reviewed by the Chair, the Head of Legal Services and myself, against a person specification based on the Standards Board guidance, but with the following criteria in addition to the statutory requirements:

- (1) Aged 18 or over
- (2) Close links to the local community, eg at least one of the following:
  - Resident in the Borough of Reading.
  - Working in the Borough of Reading.
  - Any other close objective link.
- (3) Not a political appointee, an MP, a current Parish, District or County Councillor in any authority or a candidate to be one, nor having been any of the above within the last 5 years.
- (4) Not having a public link to any of the political parties.
- (5) Not an employee or former employee of the Council within the last 5 years.
- (6) Not involved in the Council, eg not a major supplier, partner, contractor.
- (7) Not involved in a body which campaigns on issues involving the Council, or which promotes or opposes a point of view on a question of controversy which is identifiable as the view of one political party and not of another.
- (8) A proven track record of contribution to the community: this could involve working in the local community, eg as a GP, or having active community links via eg the voluntary or community sectors or via public bodies, or being involved with a faith group.

(9) Be familiar with ethical dilemmas.

(10) Have good organisational skills, and experience of committee work.

(11) Have good inter-personal skills, including assertiveness, and questioning skills.

4.10 We considered that the applications from Mr Hicks and the Rev Shenton met all of these criteria whilst the other applications, whilst having merit, did not meet all of them in full. As a consequence we recommend Mr Hicks and the Rev Shenton, for onward appointment to the Committee by full Council on 16 October 2007.

## 5. CODE OF CONDUCT

5.1 During 2005 the Standards Board for England undertook a review of the national Code of Conduct for Members, an exercise which it called "A Code for the Future". This Committee submitted comments to the Board in June 2005. The Board issued its findings and recommendations for improving the Code in September 2005. The Government (ODPM) issued a discussion paper in December 2005, and a consultation paper on a draft new Model Code of Conduct in January 2007. Following consultation with members of this Committee, I responded to the consultation paper on behalf of the Council in March 2007: this response is attached at **Appendix E**.

5.2 The Department of Communities and Local Government (DCLG) issued the Local Authorities (Model Code of Conduct) Order 2007 on 4 April 2007. This prescribed a revised model Code of Conduct, which comes into effect within three months, ie by 1 October 2007. After that date its application is mandatory.

5.3 The DCLG considers that the new Model Code delivers the commitment made in the Local Government White Paper to introduce:

- A clearer, simpler and more proportionate code
- Amended rules on personal and prejudicial interest to remove barriers to councillors speaking up for their constituents, for example on planning and licensing issues, and for public bodies on which they have been appointed to serve

5.4 The earlier consultation included a proposal to create a new category of "public service interest". The new Model Code has not gone so far as to establish this third category of interest, but it has introduced modifications to apply to the existing (and continuing) personal and prejudicial interests which have the same general effect.

5.5 I have worked through the Model Code as issued by the DCLG, and modified it for adoption by the Council. The modifications have been to remove clauses which are not relevant to Reading as a Unitary Authority; to append the General Principles prescribed by the Secretary of State (which are referred to in par 1(2)); and to retain the provisions for the declaration of gifts and hospitality (para. 15).

5.6 The main changes between the new Model Code of Conduct and its predecessor are as follows:

- A general obligation to treat others with respect
- Specific requirements to:
  - Comply with the equality and discrimination laws
  - Not bully or intimidate others
  - Not bring authority or office into disrepute - including in a private capacity but only where this has led to a criminal conviction
  - Not compromise the impartiality of people who work for the authority
  - Not prevent access to information
  - Not use position improperly for personal gain (for the Councillor or close associates)
  - Not attend meetings or be involved in decision-taking where the Councillor (or a close associate) has a personal and prejudicial interest
  - Use the resources of the Council for proper purposes
  - Not disclose confidential information other than in specified circumstances
- A re-definition of the scope of personal and prejudicial interests, to apply to members of the Councillor's family or close associates (rather than relatives or friends)
- Modifications to the rule on declaring personal interests at meetings:
  - Where the interest arises solely from membership of another public body, or another body to which the Councillor has been appointed / nominated by the Council (ie public service)
  - If the interest is not prejudicial, the Councillor need not declare the personal interest unless s/he intends to speak on the item, and may still vote on the item
- Modifications to the rules regarding prejudicial interests:
  - A Councillor with a personal and prejudicial interest may now attend the meeting to make representations, answer questions and give evidence on the matter generating the interest, but must then leave the room
  - This only applies if other members of the public can attend for the same purpose

5.7 The thinking behind the modifications concerning personal and prejudicial interests are to increase the opportunities for Councillors to express support or objections, to give them the same rights as members of the public in these respects, and to improve transparency. Councillors with a personal and prejudicial interest will (still) not be able to exercise executive functions in relation to the matter in which they have an interest, seek improperly to influence a decision about it, or stay in the room whilst it is being discussed, after they have spoken on it.

## 6. INTERESTS

6.1 As indicated above, there are two interests that Members must declare at meetings: personal interests and prejudicial interests. To have a prejudicial interest the Member must first have a personal interest. Following the *Richardson v North Yorkshire* judgment, a Member with both a personal AND prejudicial interest must declare both and leave the meeting room at which the matter in question is being discussed. As explained above, this requirement has been modified in the new Code to allow the Member to make representations, answer questions and give evidence before leaving.

## 7. COMPLAINTS

### 7.1 Complaints to Standards Board

7.1.1 During the Municipal Year 2006/07, the Standards Board has notified me of a collective complaint made by one person, about each Member of the Cabinet present at a meeting on 30 October 2006. The complainant was a member of the public who had attended the Cabinet meeting. The Board recorded this as nine individual complaints, each of which it decided not to pursue to investigation. The complaint had three parts:

- The Leader, as chair of Cabinet, had failed to treat the complainant with respect in terms of comments made by the Leader about the complainant
- A Lead Councillor had failed to treat the complainant with respect in that he took a photograph of him using his mobile phone
- The remaining Cabinet Members failed to follow the whistleblowing duty and report the Leader and Lead Councillor to the Standards Board

7.1.2 The events of the Cabinet meeting reflected a growing trend at that time for a limited number of members of the public to seek to intervene in meetings of Cabinet, Council and Committees, which they appeared to consider to be public meetings, as against meetings of the authority held in public. The position was discussed subsequently at a Group Leaders meeting, which agreed a number of recommendations made by the Chief Executive and myself to clarify and reinforce Standing Orders governing public involvement in meetings, and also to establish the principle that mobile phones should not be used in the meeting room during the course of a meeting.

### 7.2 Other Complaints

7.2.1 During the Municipal Year 2006/07 I have received 12 complaints about Councillors which were referred to me as Monitoring Officer for consideration. Of these, 7 came from other Councillors, 3 from members of the public, and 2 from officers of the Council. The breakdown of the complaints is as follows:

	Complainant		
	Councillor	Public	Officer
Con	3		1
Lab	3	2	

Lib.Dem	1	1	1
---------	---	---	---

7.2.2 The 12 complaints were about eight Councillors. Two Councillors attracted two complaints each, and one attracted three. One of the complaints from a member of the public was an extension of the complaint(s) to the Standards Board, by the same member of the public. That member of the public also made a complaint to the Ombudsman on the same subject, which was also not pursued.

7.2.3 Six complaints (50%) were about newly-elected Councillors (three). Unlike previous years, this year's local elections did not generate extra complaints.

7.2.4 An analysis of the allegations made in the 12 complaints is given below:

- Failure to treat others with respect and abuse of Council facilities
- Failure to declare a personal interest
- Breach of local protocol
- Failure to treat others with respect and bringing authority into disrepute
- Breach of local protocol
- Compromising neutrality of officers
- Failure to treat others with respect and bringing authority into disrepute
- Breach of local protocol
- No breach - misrepresentation by press
- No breach
- Bringing authority into disrepute and compromising neutrality of officers
- Breach of local protocol

7.2.5 I undertook an initial investigation of each complaint. On complaint (from the above-mentioned member of the public) was formally investigated by the Chief Executive under the Council's complaints procedure and not upheld. In three complaints I put the complaint to the Councillor and sought an explanation, from which I was able to go back to the complainant with a response that ended the matter. In four complaints I put the complaint to the Group Leader for consideration through Group procedures. In one complaint, following an investigation, I made a formal reference of the complaint to the Group Leader, who responded directly to the complainant. In the remaining three cases I did not consider that the complaint merited any further action, which I explained to the complainants.

### 7.3 Local Codes of Conduct and Protocols

7.3.1 Following the local elections in May 2006, which resulted in four wards with cross-party representation, the Chief Executive and I discussed with the Group Leaders possible amendments to the Protocol on Member : Officer Relations to provide a clearer framework for both Councillors and Officers in respect of access to information, briefings, and issues of communication. The amended protocols were agreed as working documents and circulated to all Councillors in July 2006, prior to their formal adoption for incorporation into the Council's constitution at the Annual Meeting on 16 May 2007.

7.3.2 The constitution now contains the following protocols of relevance to Councillors:



- Planning code of conduct
- Protocol on Member:Officer Relations
- Council Publicity and Elections
- Working with Reading's MPs

7.3.3 In addition, during 2005 the Head of Legal Services and I issued guidance to Councillors on interests in licensing matters.

## 8. OPERATIONAL ISSUES

### 8.1 Training

8.1.1 As in previous years, the induction programme for new Councillors elected in May 2007 included a presentation from me on Conduct and Standards. This was based on the new code of conduct, and focused on:

- Code of Conduct - how it differs from its predecessor
- Interests
- Local Protocols

8.1.2 I held a further training session on the above topics for all interested Councillors in October 2006, as part of the Councillors' Development Programme. This session had a limited attendance of four Councillors. The session focused on the (then anticipated) new code of conduct, and how it would impact on interests in particular, and included a comparative exercise with the old Code based on a case study.

8.1.3 I consider that there are two pressing training needs which should be addressed during this Municipal Year:

- 1) training in local investigations and hearings for Committee members, in particular the new Members;
- 2) training in the new Code of Conduct for all Councillors (except possibly the newly-elected Councillors this year) - which I consider should be mandatory.

### 8.2 Gifts and Hospitality

8.2.1 The Register of Gifts and Hospitality offered to Councillors in the financial year 2006/07 is attached at **Appendix F**. Under para. 17 of the (old) Code of Conduct, (para. 15 of the new one), Members must give me notification of all gifts and hospitality with a value of over £25. For 2006/07 we have added an additional column showing the value of the gift.

## 6. CONTRIBUTION TO STRATEGIC AIMS

6.1 To support the participation of Reading people in local democracy.

## **7. COMMUNITY ENGAGEMENT AND INFORMATION**

7.1 None last year.

## **8. LEGAL IMPLICATIONS**

8.1 Part III of the Local Government Act 2000 sets out the legal framework for conduct of local government Members and officers. The Government has implemented this framework through the issue of Regulations under Section 66 of the Act, including the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, which it sees as completing the standards regime for Council Members.

8.2 The standards regime applies to voting Members of Council and Cabinet Committees, including both Councillors and non-elected Members (such as the independent Members of this Committee).

8.3 Under Section 51(6)(b) of the Local Government act 2000, we must publish a notice in a local paper as soon as possible after the Council has adopted the new Code of Conduct. We must also notify the Standards Board.

## **9. FINANCIAL IMPLICATIONS**

9.1 Subject of course to the number of allegations made against Members of the authority, local investigation and determination have generated and will generate additional work for the Monitoring Officer and any other officer who undertakes an investigation. In addition, the Standards Committee will be required to set up hearings to hear the individual allegations (if the MO believes that there is a case to answer), which will have associated costs of administrative support. Under the Council's scheme of Member Allowances the independent Members of the Panel may claim a daily allowance to attend these sub-committees, at a level to be determined by the MO (£31.30 a day).

## **10. BACKGROUND PAPERS**

Attached

"A Code for the Future" - Standards Board consultation paper and leaflet

"Dual Hatted Members and Lobby Groups" - Standards Board guidance

## Article 9 – The Standards Committee

### 9.1 Standards Committee

The Council meeting will establish a Standards Committee.

### 9.2 Composition

#### (a) Political Balance

Standards Committees do not have to comply with the political balance rules in section 15 of the 1989 Act.

#### (b) Membership

The Standards Committee will be composed of:

- six Councillors, subject to each registered political group on the Council having an entitlement to at least one seat; and two persons who are not a Councillor or an officer of the Council or any other relevant authority as defined in the Local Government Act 2000 and who are appointed in accordance with that Act and the Relevant Authorities (Standards Committee) Regulations 2001
- each political group may nominate substitute members and those Councillors may attend in the place of appointed Councillors provided that they have received training similar to that received by members of the Committee
- no more than one member of the Cabinet; and the Leader may not be a member of the Standards Committee

#### (c) Independent Members

Independent members will be entitled to vote at meetings;

#### (d) Chairing the Committee

A member of the Cabinet may not chair the Committee.

#### (e) Quorum

The quorum of the Standards Committee shall be three Councillors, and one independent member who must be present throughout the meeting of the Committee.

#### (e) Voting

Decisions by the Standards Committee shall be reached by a simple majority vote but any two Members of the Committee present at the meeting where a decision is taken shall be able to require any matter considered by the Committee to be

referred for investigation to the Council's Chief Auditor, the Council's External Auditors, the Audit Commission or the Standards Board for England as appropriate.

**(f) Calling of Meetings**

Meetings of the Standards Committee may be called by:

- the Chief Executive, or
- the Monitoring Officer, or
- the Leader of the Council, or
- the Chair of the Standards Committee, or
  - a petition signed by at least one fifth of the Councillors serving on the Council (ie ten Councillors)

**9.3 Role and Function**

The Standards Committee will have the following roles and functions:

The general functions of a Standards Committee are to be:

- (a) promoting and maintaining high standards of conduct by the members and co-opted members of the Council, and
- (b) assisting members and co-opted members of the Council to observe the Code of Conduct, and in so doing:
  1. To determine allegations about the personal conduct of Council Members involving a breach of the Code of Conduct, referred by an Ethical Standards Officer of the Standards Board under the Council's Local Determination Procedure, or by the Monitoring Officer under the Council's Local Investigation Procedure.
  2. To determine local allegations of breaches of the Council's local codes of practice which have been investigated by the Monitoring Officer under the Council's Local Investigation Procedure, in particular the Planning code of conduct and the Protocol on Member/Officer Relations.
  3. To deal with any reports from a case tribunal or interim case tribunal, following the determination of an allegation about the personal conduct of a Council Member involving a breach of the Code of Conduct by the National Adjudication Panel for England.
  4. To monitor the probity and propriety of all aspects of Council business.
  5. To scrutinise the conduct of individual Councillors, political groups and informal grouping, and to issue reprimands to individual Councillors or groups of Councillors in circumstances where breaches of the law, codes of practice or other conduct considered inappropriate have been established.

6. To advise the Council on the adoption or amendment of national and local codes of conduct and to monitor their effectiveness.
7. To make recommendations to the Council on any matters or issues relating to probity, propriety and general conduct where the Panel considers it appropriate to do so in the interests of maintaining the highest standards in the carrying out of the Council's functions.
8. To refer any matter considered by the Committee for investigation by the Council's Chief Auditor (or other appropriate officer), the Council's external auditors, the Audit Commission or the Standards Board for England as it sees appropriate; the Committee may also refer any such matter to the relevant Political Group(s) for their consideration.
9. To advise, train or arrange to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct and local codes of conduct;
10. To grant dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;

The Standards Committee will also consider any other matters as the Council refers to it from time to time



# Local Determination

Procedure for local determination of allegations about the personal conduct of Council members

## A. THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2003

APPROVED BY STANDARDS COMMITTEE - 10 FEBRUARY 2004

### Introduction

1. Where an investigation has been completed by an Ethical Standards Officer (ESO) of the Standards Board for England and it has been referred to the Council's Monitoring Officer (MO) in accordance with the provisions of the Local Government Act 2000, the determination of the complaint by the Council's Standards Committee or a Sub-Committee of the Standards Committee, will be governed by this procedure. It applies to complaints about the conduct of elected members and co-opted members with voting rights.
2. The Chair of the Standards Committee or a Sub-Committee may agree to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.
3. Upon receipt of the ESO's report, the MO will take conduct of the matter and arrange for a Sub-Committee of the Standards Committee to consider the report and to determine the matter.
4. If for any reason the MO is of the view that a possible conflict of interest may arise of a kind that would make it difficult for him/her to give independent advice to the hearing, s/he will arrange for another suitable officer to take conduct of the matter.

### Notifying the Member

5. Within five working days of the receipt of the ESO's report by the Monitoring Officer, s/he shall send a copy of the report to the Member and shall notify the Chair of the Standards Committee that the report has been received.
6. At the same time the Monitoring Officer shall ask for a written response from the Member, within fifteen working days, stating whether or not he/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 their own expense, 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

The Monitoring Officer will also inform the Member that if, at the Hearing, he/she seeks to dispute any matter contained in the ESO's report, without having previously notified the Monitoring Officer of their intention to do so, the Sub-Committee may either adjourn the meeting to enable the Monitoring Officer to seek a response from the ESO, or refuse to allow the disputed matter to be raised.

7. If the Member's response significantly challenges any part of the ESO's report, the Monitoring Officer shall forward the response to the relevant ESO to enable the ESO to say whether s/he:
  - Wants to be represented at the hearing
  - Wants to call relevant witnesses to give evidence
  - 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
8. The Member and the Monitoring Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Sub-Committee may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Sub-Committee to reach its decision.
9. Nothing in this procedure shall limit the Chair of the Sub-Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.
10. The Chair of the Sub-Committee, in consultation with the Monitoring Officer will then
  - confirm a date, time and place for the hearing, which must be within three months from the date that the ESO's report was received.
  - confirm the main facts of the case that are agreed
  - confirm the main facts that are not agreed



- confirm which witnesses will give evidence
- outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private, and
- request the Monitoring Officer to provide this information, with the Agenda, to the Members of the Sub-Committee and the Member at least two weeks before the proposed date of the hearing.

### **The Sub-Committee**

11. The Sub-Committee shall be chaired by an independent member.
12. The Sub-Committee shall be composed of members of the Standards Committee chosen by the Monitoring Officer in consultation with the Chair of the Standards Committee. Formally approved substitute Members of the Standards Committee may sit on a Sub-Committee if that is necessary to ensure that the hearing takes place within the statutory time limit. Membership of the Sub-Committee shall be chosen with a view to ensuring fairness, independence and organising the hearing within the statutory time-limits.
13. The Sub-Committee will be composed of four members in total with a minimum of one independent member and three elected members, one from each political group represented on the Standards Committee; and the quorum for the Sub-Committee shall be three members.
14. Where a member of the Sub-Committee is unable at the last minute to attend a meeting of the Panel the Monitoring Officer shall arrange for an approved substitute member of the Standards Committee to attend the meeting. The Monitoring Officer shall brief the substitute member about the complaint under consideration.
15. Each Sub-Committee member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast, with the Chair having a casting vote. Abstentions shall not be permitted.
16. The Committee Service shall carry out administration for the hearing.
17. The meeting of the Sub-Committee will be open to the public and press unless the Sub-Committee considers that confidential information or exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed or that it is appropriate to exclude the press and public having considered relevant Articles of the European Convention on Human Rights.

### **Procedure at the Hearing**

18. The initial order of business at the hearing shall be as follows:
  - establish that a quorum exists.

- declarations of interest
  - consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present .
  - Any representation from the Monitoring Officer and/or the Member as to reasons why the Sub-Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Sub-Committee decides that it will not exclude press and public, the Monitoring Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present.
20. The purpose of the hearing is to test the robustness of the report of the investigation produced by the ESO, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Sub-Committee based on seeking information in order to identify potential flaws in the report and to clarify issues. The Chair of the Sub-Committee will control the procedure and evidence presented at the hearing, including the questioning of witnesses.
21. The procedure at the hearing will be as follows, subject to the Chair of the Sub-Committee being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting:
- (1)The Monitoring Officer will summarise the nature of the complaint, the contents of the Ethical Standards Officer's report and any further information relevant to the complaint.
  - (2)The Monitoring Officer will then call any witnesses, which may include the complainant(s) and ask them to give their evidence. Wherever possible, evidence shall have been put into writing before the hearing and copies circulated with the Agenda. Where evidence has been put into written form, the Chair may dispense with verbal evidence if the Member about whom the complaint has been made (or his/her representative) and the Monitoring Officer agree to do so.
  - (3)The Chair will allow the Member (or his/her representative) to ask questions of each witness after they have given their evidence. Any such questions shall be asked through the Chair. The Member should make no statements at this stage.
  - (4)After the Member has asked questions, Members of the Sub-Committee will have the opportunity to ask questions of each witness.
  - (5)The Member will then be asked to present his/her response to the complaint, referring to any documentation previously made available to the Sub-Committee and anything said by the witnesses.
  - (6)The Member may call witnesses (subject to any limit on the number of witnesses the Member may call imposed by virtue of paragraph 9 above)

and ask them to give their evidence. Wherever possible, evidence shall have been put into writing before the hearing and copies circulated with the Agenda. Where evidence has been put into written form, the Chair may dispense with verbal evidence if the Member about whom the complaint has been made (or his/her representative) and the Monitoring Officer agree.

(7) After each witness has given their evidence, the Monitoring Officer and Members of the Committee will have the opportunity to ask questions of each witness through the Chair.

(8) The Chair of the Committee will then allow the Monitoring Officer and Members of the Committee to ask questions of the Member.

22. Where the Member seeks to dispute any matter in the ESO's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Monitoring Officer shall draw this to the attention of the Sub-Committee. The Sub-Committee may then decide:

- not to admit such dispute but to proceed to a decision
- to admit the dispute, but to invite the Monitoring Officer to respond
- to adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute or to invite the ESO to attend

#### **Decision by the Sub-Committee**

23. The Sub-Committee will consider the representations and evidence in private and conclude which of the following findings to adopt:

- That there is no evidence of any failure to comply with the Code of Conduct
- That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken
- That the Member has failed to comply with the Code of Conduct and should be:
  - censured, or
  - restricted access to the premises and resources of authority for a maximum period of three months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member
  - suspended or partially suspended for a maximum period of three months, or

- suspended or partially suspended for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Sub-Committee
24. In deciding what penalty to set, the Sub-Committee will consider all relevant circumstances including those covered in the Guidance produced by the Standards Board for England. If it considers it appropriate to do so, the Sub-Committee may return to the hearing to announce its finding and to seek any further comments from the Monitoring Officer, the ESO or the Member before making any decision with regard to sanction.
  25. The Sub-Committee will then return and the Chair will announce the decision of the Panel and the reasons for that decision.
  26. If the matter is a complicated one, where the complaint has a number of aspects, the Sub-Committee can decide to consider the evidence and reach a finding on each aspect separately.
  27. The Sub-Committee will then consider in open session whether there are any recommendations which it should make to the Standards Committee arising from consideration of the allegation. For example, providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or related matters; for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the authority's decision making procedures or for preventing or deterring any further breaches of the Code of Conduct.

## **Appeal**

28. Where the Sub-Committee determines that the Member has failed to comply with the Code of Conduct the Monitoring Officer shall inform the Member of his or her right to appeal and the procedure for that.

## **Notice of findings**

29. The Monitoring Officer will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.
30. Within two weeks of the end of the hearing the Monitoring Officer circulate a notice of the full written decision, in the format recommended by the Standards Board, to the Member, the Complainant (where possible), the ESO concerned, the Standards Committee and any other authority concerned.
31. At the same time the Monitoring Officer shall arrange for a summary of the findings to be published in two newspapers circulating in the area of the Authority and on the council's web site.
32. Where the Sub-Committee determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 33 shall state that the Sub-Committee found that the Member had not failed to comply with the code of

conduct and shall give its reasons for reaching that finding. The notice shall not be published in local newspapers if the Member so requests.

33. Where the Sub-Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 33 shall

- (i) state that the Sub-Committee found that the Member had failed to comply with code of conduct but that no action needs to be taken in respect of that failure;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached;
- (iv) state that Member concerned may apply for permission to appeal against the determination.

34. Where the Sub-Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 33 shall

- (i) state that the Sub-Committee found that the Member had failed to comply with code of conduct but that no action needs to be taken in respect of that failure;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached;
- (iv) specify the sanction imposed, and
- (v) state that Member concerned may apply for permission to appeal against the determination.

### **Confidentiality and disclosure of information**

35. Where the Chair of the Sub-Committee considers that the ESO's report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the LGA 1972 and regulations), and in consequence that it is likely that the Sub-Committee will, during consideration of these papers, not be open to the public, he/she shall instruct the Head of Central Administration to not provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

36. The Hearing will be held in public apart from the following three situations:

- Where 'confidential information' is to be revealed, the Sub-Committee must hold such parts of a meeting in private. Confidential information is information provided by a government department under the condition that it must not be revealed, and information that cannot be revealed under any legislation or by a court order.
- Where 'exempt information' is to be revealed the Sub-Committee may exercise their discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Schedule 12A to the

LGA 1972 and regulations and include information relating to the personal circumstances of any person.

- It is considered that the public should be excluded by reason of the provisions of the European Convention on Human Rights.

# Local Investigation

## B. THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) (AMENDMENT) REGULATIONS 2003

APPROVED BY STANDARDS COMMITTEE - 1 FEBRUARY 2005

### 1 Introduction

- 1.1 The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 now enable the Standards Board for England to refer complaints of Councillor misconduct to the Monitoring Officer of a local authority for local investigation, instead of investigation by the Standards Board's Ethical Standards Officers, before a complaint is determined by the Authority's Standards Committee (or Sub-Committee). The Standards Board has published guidance as to how local authorities should arrange for the conduct of such local investigations. The regulations also make important amendments to the powers of Standards Committees, even in cases which have been investigated by an Ethical Standards Officer.
- 1.2 This is a further step in giving local authority Standards Committees responsibility for complaints of Councillor misconduct, and will assist the Standards Board in ensuring that the less serious complaints are dealt with promptly.
- 1.3 This report sets out the implications of the regulations and a procedure for such local investigations, leading to a hearing by the Standards Committee or a hearing sub-committee set up by the Committee under the Local determination procedure.

### 2 Pre-Investigation

- 2.1 When the Standards Board receives a complaint, it has first to decide whether the complaint appears to relate to a possible failure to comply with the Code of Conduct, and then whether it merits investigation. The Standards Board will now notify the Monitoring Officer of the complaint at this early stage and ask for background information, in order to ensure that it only refers for investigation those complaints which really merit such investigation. Whilst there is no duty on the Monitoring Officer to seek to resolve the complaint at this stage, and many complaints will not be capable of such local resolution, this may enable the Monitoring Officer in appropriate cases to explore whether there is anything which the Councillor and/or the authority could do to resolve the complaint and thereby avoid the time and cost of a formal investigation. Such local resolution would be effected by securing the agreement of the

complainant, or otherwise persuading the Standards Board, that the complaint be not investigated or that no action is required on it.

### 3. Local Investigations

#### 3.1 Receipt of the Complaint

3.1.1 Under the new regulations, where the case is referred by the Standards Board for investigation, it will go to an Ethical Standards Officer who will decide whether to allocate it to one of the Standards Board's own investigators or to refer it to the authority's Monitoring Officer for local investigation. The ESO will not refer matters for local investigation where the serious nature of the matter means that it is likely to require a sanction in excess of the Standards Committee's maximum sanction of 3 months' suspension. Other criteria highlighted by the Standards Board are:

- the matter does not appear to need the heavier penalties available only to The Adjudication Panel for England;
- the allegation is of an entirely local nature and does not raise matters of principle;
- the initial investigation by an ethical standards officer has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

3.1.2 The ESO is less likely to refer cases if there is evidence that a local investigation would be perceived as unfair or biased or there are any relevant local political issues that may have a bearing on the investigation.

3.1.3 In referring a complaint to the Monitoring Officer, the ESO will send a copy of the original complaint letter and of any other relevant information which he/she possesses. In exceptional cases, such as a single letter containing a number of different complaints, the ESO may edit the complaint letter and merely pass on those parts relevant to the particular complaint.

3.1.4 On receipt of the referred complaint, the Monitoring Officer will notify the Councillor and the complainant, and will arrange for the investigation.

3.1.5 At this stage the Monitoring Officer will notify the members of the Standards Committee in a confidential memorandum that he/she is conducting an investigation, but will not at this stage inform the Committee of the identity of either the Member or the complainant. The Monitoring Officer will also provide:

- (i) a brief description of the conduct which is the subject of the allegation;
- (ii) the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation; and
- (iii) of the identity of the Investigating Officer.

3.1.6 The Monitoring officer will also inform the Chair, in confidence, of the name of the Councillor against whom the complaint is made, and the identity of the



person making the complaint, unless it is the view of the Monitoring Officer that such identification might prejudice the investigation or put the complainant at risk.

### **3.2 Appointment of the Investigating Officer**

- 3.2.1 The Monitoring Officer is the principal adviser to the Standards Committee and the primary contact for Councillors who have enquiries on standards issues, such as whether they have a personal or prejudicial interest in a particular matter. That role may be incompatible with personally undertaking the Investigating Officer role, which includes presenting the investigation report at any local standards hearing, so the Monitoring Officer will normally need to appoint another person to undertake the investigation.
- 3.2.2 The Monitoring Officer will either appoint another officer of the authority to undertake the investigation, or may decide that in the circumstances of the case it may be appropriate to appoint an outside investigator, either from another authority or an experienced external investigator. The Monitoring Officer has a statutory power to make such appointments, and to make payments to outside investigators where appropriate.
- 3.2.3 The Investigating Officer will be required to produce a full report, setting out his/her conclusions as to the facts of the matter and whether the Councillor did or did not fail to comply with the Code of Conduct. In the rare cases where an external investigator may be appointed, the Monitoring Officer will arrange for the Council to grant an indemnity against the legal costs of defending any defamation claim and any damages which might be awarded, and will arrange for the Council to insure this risk.
- 3.2.4 The position of the Monitoring Officer as principal point of advice to individual members on standards issues will sometimes give rise to a further conflict of interest which would rule the Monitoring Officer out from acting as the adviser to the Standards Committee for individual case hearings. In such cases the Monitoring Officer will arrange for another officer to act as the adviser to the Standards Committee for individual case hearings.

### **3.3 Procedure for Local Investigations**

- 3.3.1 A procedure for local investigations, which will form part of the instructions to the Investigating Officer and will inform both the Councillor and the complainant as to how the matter will be dealt with, is attached as **Appendix 1** (see below). Under this procedure, the investigation would run as follows:
- a. The Monitoring Officer advises the Councillor and the Complainant of receipt of the complaint, of the identity of the Investigating Officer and of the Investigation Procedure. He/she will also provide the Councillor with a copy of the complaint;
  - b. The Investigating Officer will contact the Councillor and the complainant for their comments and to identify any persons who the

Investigating Officer should interview and any evidence which he/she should examine;

- c. The Investigating Officer will conduct such interviews as appear to him/her to be necessary, including more detailed interviews with the Councillor if required;
  - d. The Interviewing Officer will send his full draft report to the Councillor and the complainant, and appropriate extracts to any person who has provided evidence which he/she has relied upon in writing the report, and give them 10 days for them to send him/her any comments or suggested corrections on the draft report;
  - e. The Interviewing Officer will produce a final report, taking account of any such comments and suggested corrections, and send it to the Monitoring Officer;
  - f. Where the Interviewing Officer concludes in the final report that there has not been a failure to comply with the Code of Conduct, the Monitoring Officer will submit the report to the Standards Committee. The Standards Committee will consider the report and any representations from the Councillor and will either:
    - i. accept the Investigating Officer's conclusions and take no further action, or
    - ii. resolve that the matter should be considered at a formal hearing. Note that this is not a finding of fault on the part of the Councillor but merely a conclusion that they are not prepared at that stage to accept the Investigating Officer's conclusions and that the matter merits examination at a formal hearing.
  - g. Where the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct, the matter must go to a formal hearing without such a preliminary step.
  - h. If the matter goes to a formal hearing, that hearing will be conducted in line with the Council's procedure for Local Determination (as amended), except that the Investigating Officer will take the place of the Standards Board's representative in presenting the report and introducing any relevant evidence and witnesses.
- 3.3.2 Under this procedure, in order to prevent any prejudice to the Standards Committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of that investigation, until they receive the agenda and papers, including the Investigating Officer's report, for the meeting which is to consider that report.

#### 3.4 Additional Failures to Comply with the Code of Conduct

- 3.4.1 The Regulations provide that where a matter is referred for local investigation, the Investigating Officer's remit is limited to the conduct which comprises the subject matter of the original complaint. Accordingly, where the Investigating Officer identifies additional matters outside the scope of the original complaint, he/she will not be able to add them into his/her investigation.
- 3.4.2 However, the Investigating Officer's remit is to conclude whether the conduct constitutes a failure to comply with the Code of Conduct, and he/she is therefore entitled to conclude that the conduct constitutes a failure to comply with paragraphs of the Code of Conduct other than those specifically cited by the complainant.
- 3.4.3 By way of example, if the complaint were one of rudeness by one Councillor to another, the Investigating Officer would not be entitled to include in his investigation any other instances of such rudeness, but would be entitled to conclude that the instance complained of constituted a failure to treat with respect even if the original complaint only suggested that it was conduct likely to bring the authority into disrepute.

### **3.5 Reference back to the Standards Board**

- 3.5.1 The Regulations (and the recommended investigation procedure) provide that, at any time during the course of an investigation, the Investigating Officer can report to the Monitoring Officer who can request the ESO to resume responsibility for the investigation. The final decision to resume such responsibility rests with the ESO.
- 3.5.2 Such a situation may arise in circumstances where, during the course of the investigation, it may become apparent that the conduct complained of is more serious than originally assessed by the ESO, and should be heard by a National Adjudication Panel Case Tribunal, with powers to impose sanctions of up to one year's suspension or up to five year's disqualification, rather than a Standards Committee with a limited power to suspend the Councillor for up to 3 months.

## **4 Local Hearings**

The Regulations also make certain changes in respect of the conduct of local hearings. The Council's procedure for Local Determination will therefore need to be amended to take account of these changes, as follows:

### **4.1 Timing**

- 4.1.1 Where a matter is the subject of local investigation, the hearing must be held (i.e.: completed) within 3 months of the date on which the Investigating Officer presents his/her final report to the Monitoring Officer.

### **4.2 Additional Evidence**

4.2.1 The regulations now state specifically that if the Standards Committee, in the course of a hearing, feels that it needs additional evidence in order to come to a determination of the matter, it can adjourn and request the Monitoring Officer to provide such further information or undertake further investigation, but the Committee can only do so once on any one matter.

### **4.3 Sanctions**

4.3.1 The regulations now make it clear that the Standards Committee has the flexibility to combine sanctions. Accordingly, the Committee can now set the sanctions in any particular case as any one, or combination, of the following:

- a. censure;
- b. restriction of access to Council premises or use of Council resources for up to 3 months;
- c. a requirement to give a written apology;
- d. a requirement to undergo training;
- e. a requirement to undertake conciliation;
- f. suspension or partial suspension for a period of up to 3 months, and
- g. suspension or partial suspension until the Councillor undertakes training or conciliation or provides a written apology.

4.3.2 The Standards Committee could, in an appropriate case, determine that the member should be subject to a 3-month suspension from the authority but that, if he/she were to provide a written apology and undergo training, the suspension would be reduced to a 2-month partial suspension from just the Planning Committee.

### **4.4 Reference back to the Standards Board**

4.4.1 The regulations also allow the Standards Committee to ask the Standards Board to resume responsibility for a matter at any stage. This would normally be where the Investigating Officer's report identifies conduct of such seriousness that the Committee believes that its maximum sanction would be inadequate, but it could be relevant if so many members of the Standards Committee were conflicted out of any hearing on a matter that it would not be possible to hold a hearing, or if the Committee felt that local circumstances made it impossible to hold a proper and impartial hearing on the matter. Such a request must be directed to the ESO, who has the final decision whether to resume responsibility for the case. Such a request cannot be made once the hearing has been concluded.

## **5 Local Protocols**

- 5.1 The Council has adopted the following local protocols as additional local guidance for members:
- a. Protocol on Member / Officer Relations
  - b. Planning Code of Conduct

These local protocols do not form part of the Code of Conduct for Members and so are not enforced by the Standards Board for England unless the particular conduct is also a failure to comply with the Code of Conduct, for example where a failure to treat an officer with mutual respect, as required by the Member / Officer relations Protocol also constitute conduct likely to bring the authority into disrepute under the Code of Conduct.

- 5.2 The Council has delegated authority to the Standards Committee to issue reprimands to individual Councillors or groups in circumstances where allegations are made of breaches of the codes of practice. To ensure the process for enforcing such protocols are fair, the same procedures for local investigation and local hearings will be applied to complaints of breach of local protocols, in cases where the Monitoring Officer is unable to resolve the matter to the satisfaction of the complainant, and there would be no scope for referring the matter back to the Standards Board for England.

## APPENDIX 1

# Reading Borough Council

## Procedure for Local Investigation of Referred Complaints

\*\*\*\*\*

### 1. Introduction and Summary

- 1.1 This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors<sup>1</sup>. No departure will be made from this procedure unless and until the Monitoring Officer<sup>2</sup> has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
- 1.2 This procedure applies to breaches of the authority's Code of Conduct for Members. The authority has also resolved that the same procedure shall apply to the investigation of allegations of breaches of the authority's local protocols<sup>3</sup>, in so far as they apply to Councillors.
- 1.3 Where the Standards Board for England receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Board refers the allegation to an Ethical Standards Officer for investigation<sup>4</sup>. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the authority's Monitoring Officer. If the matter is referred before the Ethical Standards Officer has completed his/her investigation, the Monitoring Officer is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee or to a Sub-Committee of the Standards Committee convened for the purpose<sup>5</sup>. Similarly, when the Monitoring Officer receives an allegation of a failure by a Councillor to comply with a local protocol, and s/he is of the opinion that the allegation merits investigation and cannot be resolved through conciliation or mediation, s/he shall arrange

---

<sup>1</sup> This procedure will apply to allegations of breach of the authority's Code of Conduct by elected and co-opted members of the authority and by the directly elected mayor of the authority (if any), and the word "Councillor" is to be taken to refer to all such persons.

<sup>2</sup> The "Monitoring Officer" is an officer of the Council who has been designated as the authority's Monitoring Officer under section 5 of the Local Government and Housing Act 1989

<sup>3</sup> Authorities may supplement their Code of Conduct for Members with local protocols which do not form part of the Code of Conduct. Allegations of breach of a local protocol may also constitute breaches of the Code of Conduct, and so fall within the jurisdiction of the Standards Board. Where a particular allegation of breach of protocol does not form a breach of the Code of Conduct, it would fall to be investigated and determined by the authority concerned.. Accordingly this procedure will apply equally to allegations of breach of a local protocol, but by virtue of a delegation from Council rather than by virtue of the Local Authorities (Code of Conduct)(Local Determination)(Amendment) Regulations 2004 – SI 2004 No. 2617.

<sup>4</sup> Section 58(2), Local Government Act 2000.

<sup>5</sup> Where an authority determines that individual allegations shall be considered by a Sub-Committee, or Regulations require that a complaint be considered by a Sub-Committee, references in this procedure to the Standards Committee should be read as being references to such a Sub-Committee.

for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee.

- 1.4 Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority's Code of Conduct for Members or a local protocol, the Standards Committee must meet to decide whether to accept that finding or to proceed to a formal hearing. Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct for Members or a local protocol, or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence..
- 1.5 In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

## 2. Interpretation

- (a) 'Councillor 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 Councillor's representative.
- (b) 'Investigating Officer" means the Ethical Standards Officer (ESO) who referred the report to the authority (and his/her nominated representative) or, in the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative).<sup>6</sup>
- (c) "The Matter" is the subject matter of the Investigating Officer's report.
- (d) 'The Standards Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

## 3. Notification of Reference of Allegation to the Monitoring Officer

---

<sup>6</sup> This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the "Investigating Officer" no longer includes the Monitoring Officer.

(a) Appointment of Investigating Officer

Upon receipt of the allegation from an Ethical Standards Officer, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the authority's Standards Committee. The Investigating Officer will normally be an officer of the authority<sup>7</sup>, but on rare occasions the Monitoring Officer may consider it appropriate to appoint an officer of another local authority, or an external Investigating Officer.

(b) Notification to the Councillor

The Monitoring Officer will then notify<sup>8</sup> in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) of the conduct which is the subject of the allegation;
- (iv) of the section(s) of the Code of Conduct or local protocol which appear to be relevant to the allegation;
- (v) of the procedure which will be followed in respect of the allegation, and of the identity of the Investigating Officer.
- (vi) The Monitoring Officer shall provide the Councillor with a copy of any report received from the Ethical Standards Officer.

(c) Notification to the Standards Committee

At the same time as notifying the Councillor, the Monitoring Officer will notify each Member of the Standards Committee in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(d) Notification to the Person who made the Allegation

At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Initial response of the Councillor

---

<sup>7</sup> There are two distinct roles, that of the Investigating Officer and that of legal adviser to the Standards Committee. The Monitoring Officer may him/herself take on the role of Investigating Officer. Where he/she does so, he/she must also arrange for a separate legal adviser to the Standards Committee in respect of the allegation.

<sup>8</sup> In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Councillor.



In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct or local protocol which is the subject of the allegation;
- (ii) listing any documents which the Councillor would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- (iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of a person or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iv) providing the Investigating Officer with any information which the Councillor would wish the Investigating Officer to seek from any person or organisation.

(f) Supporting information from the person who made the allegation

In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days:

- (i) listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- (ii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of a person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iii) providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

4. Conduct of Investigation

(a) Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Standards Committee a report which, together with any report provided by the Ethical Standards Officer (where appropriate), would provide the Standards Committee with sufficient information to determine whether the Councillor has acted in breach of the Code of Conduct or local protocol and, where there has been a breach of the Code of Conduct

or local protocol, whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

(b) Termination of the Investigation

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

(c) Additional Matters

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct or local protocol by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall either:

- (i) *(where the additional matter relates to an apparent breach of the authority's Code of Conduct by a member of the authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 3(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct,. The Monitoring Officer will then determine whether to report the additional matter to the Standards Board;
  - (ii) *(where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct by a member of the authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 3(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's local protocols. The Monitoring Officer will then take a decision whether to refer the matter to an Investigating Officer for local investigation and report to the Standards Committee as appropriate. Where the original matter relates to an allegation of breach of a local protocol, and the additional matter relates to a further breach of a local protocol of the same authority, the Monitoring Officer may, with the consent of the Councillor, request the original Investigating Officer to extend his investigation to include the additional matter;
- (d) Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 3(e)(ii) and (iii) above, the Investigating Officer shall include in this list each document,

person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than to contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.

(e) Production of documents, information and explanations

- (i) In the course of the investigation, the Investigating Officer (or any person authorised on his/her behalf) may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/her/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.
- (ii) In the course of the investigation, the Investigating Officer (or any person authorised on his/her behalf) may require any authority of which the Councillor is a member to provide any document which is in its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

(f) Interviews

(i) Requesting attendance

In the course of the investigation the Investigating Officer may request any person to attend and appear before him/her or otherwise provide any information, document or explanation for the purpose of Paragraph 3(e), as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) Representation

Any person who appears before the Investigating Officer arrange to be accompanied at their own expense by a friend, who may be a solicitor.

(iii) Notes of interviews

Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person(s) interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

(g) Costs

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to

his/her request, such fees or allowances as he/she considers to be appropriate subject to a maximum ceiling set by the Monitoring Officer.

(h) Reference back to the Standards Board (allegations of breach of the Code of Conduct for Members only)

At any point in the course of the investigation, if the Investigating Officer is of the opinion

- (i) that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
- (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

he/she may, after consulting the Monitoring Officer, suspend his/her investigation and the Monitoring Officer shall then request the Ethical Standards Officer to resume his investigation of the matter.

Where the Ethical Standards Officer does resume his investigation, the Monitoring Officer shall ensure that the Councillor concerned, the person who made the complaint, and the members of the Standards Committee is informed of such resumption. Where the Ethical Standards Officer declines to resume his investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his/her investigation.

5. The Draft Report

- (a) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report setting out:
- (i) the details of the allegation;
  - (ii) the relevant provisions of statute, of the Code of Conduct and any relevant local Protocols
  - (iii) the Councillor's initial response to notification of the allegation (if any);
  - (iv) the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
  - (v) a list of any documents relevant to the matter;
  - (vi) a list of those persons whom he/she has interviewed and those organisations from which he/she has sought information;
  - (vii) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
  - (viii) a statement of his/her draft findings of fact;
  - (ix) his/her conclusion as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members or a local protocol, and

- (x) any recommendations which the Investigating Officer is minded to make to the Standards Committee for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach.
- (b) The draft reports should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the investigating Officer will present a final report to the Standards Committee once he/she has considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.
- (d) The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

## **6. The Final Report**

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer the final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses;
- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
  - (i) where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members or a local protocol, he/she will refer the report to the Standards Committee for their consideration, and
  - (ii) where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members or with a local protocol, he/she will refer the report to the Standards Committee for a formal hearing.
- (c) The Monitoring Officer shall ensure that, when the agenda for the Standards Committee is sent out to members of the Standards Committee, including the final report, the agenda and the report are also sent to:

- (i) The person who made the complaint;
- (ii) The Ethical Standards Officer

together with a note explaining the circumstances under which the Standards Committee may conduct a hearing into the allegations, and the procedure for these events.

(d) Where the Standards Committee considers the report, it shall make one of the following findings:

- (i) That it accepts the Investigating Officer's finding that the Councillor has not failed to comply with the Code of Conduct for Members as set out in the allegation;
- (ii) That it accepts the Investigating Officer's finding that, on the facts as set out in the report, the Councillor has not failed to comply with a local protocol, or
- (iii) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.<sup>9</sup>

(e) Where the Standards Committee finds that there has been no failure to comply with the Code of Conduct or with a local protocol, the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to

- (i) The Councillor;
- (ii) The Ethical Standards Officer;
- (iii) The Standards Committee, if the finding was made by a Sub-Committee of the Standards Committee;
- (iv) The Standards Committee of any other local authority of which the Councillor is also a member
- (v) The person who made the allegation.

And shall ask the Councillor whether he objects to the publication of a notice of the finding in at least one local newspaper, and arrange for the publication of such a notice unless the Councillor so objects.

(f) Where the Standards Committee finds that the matter should be considered at a full hearing, or the Investigating Officer's report contains a finding that the Councillor did fail to comply with the Code of Conduct or a local protocol, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure for Local Determination Hearings, subject to the following variations:

---

<sup>9</sup> Note that this is not a finding that there has been a failure to comply with the Code of Conduct for Members or with a local protocol, but simply that, on the basis of the Investigating Officer's report, the Standards Committee is not at this stage prepared to come to a final conclusion that there has been no such failure to comply, and that the matter merits consideration at a full hearing.

- (i) The hearing shall be conducted no sooner than 14 days from, and no later than 3 months from the date on which the Monitoring Officer received the report of the Investigating Officer;
- (ii) the report of the Investigating Officer shall be treated as if it constituted the report of the Ethical Standards Officer;
- (iii) the Monitoring Officer will not conduct Pre-Hearing enquiries of the Councillor, and
- (iv) the Investigating Officer shall be responsible for presenting the report to the Standards Committee and introducing any witnesses whom he considers that the Standards Committee should hear in order to be able to give the matter proper consideration.



## THE MEMBERS' CODE OF CONDUCT

### *PART 1*

#### GENERAL PROVISIONS

##### Introduction and Interpretation

1. (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State (See Part 4 below)
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:
  - (1) "meeting" means any meeting of—
    - (a) the authority;
    - (b) the executive of the authority;
    - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;
  - (2) "member" includes co-opted members and appointed members as well as Councillors.

##### Scope

2. 1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
  - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.
- 2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.



- 3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted
- 4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- 5) Where you act as a representative of your authority—
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### General Obligations

3.
  - 1) You must treat others with respect.
  - 2) You must not—
    - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)];
    - (b) bully any person;
    - (c) intimidate or attempt to intimidate any person who is or is likely to be—
      - (i) a complainant,
      - (ii) a witness, or
      - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
    - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
4. You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
    - (i) you have the consent of a person authorised to give it;
    - (ii) you are required by law to do so;
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
    - (iv) the disclosure is—
      - reasonable and in the public interest; and
      - made in good faith and in compliance with the reasonable requirements of the authority; or
  - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You—
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of your authority—
    - (i) act in accordance with your authority's reasonable requirements;
    - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. 1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—
- (a) your authority's chief finance officer; or
  - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- 2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## PART 2

### INTERESTS

#### Personal Interests

8. 1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) any body—
  - exercising functions of a public nature;
  - directed to charitable purposes; or
  - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
- (iii) any employment or business carried on by you;
- (iv) any person or body who employs or has appointed you;
- (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
- (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
- (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
- (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
- (ix) any land in your authority's area in which you have a beneficial interest;

- (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
  - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- 2) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### Disclosure of Personal Interests

- 9.
- 1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
  - 2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
  - 3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

- 4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- 7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000

### **Prejudicial Interest Generally**

10.
  - 1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
  - 2) You do not have a prejudicial interest in any business of the authority where that business—
    - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
    - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
    - (c) relates to the functions of your authority in respect of—
      - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
      - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
      - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

### **Prejudicial Interests arising in relation to Overview and Scrutiny Committees**

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—
- a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
  - b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

### **Effect of Prejudicial Interests on Participation**

12. 1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
  - (b) you must not exercise executive functions in relation to that business; and
  - (c) you must not seek improperly to influence a decision about that business.
- 2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations,

answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### *PART 3*

#### REGISTRATION OF MEMBERS' INTERESTS

##### Registration of Members' Interests

13. 1) Subject to paragraph 14, you must, within 28 days of—
- (a) this Code being adopted by or applied to your authority; or
  - (b) your election or appointment to office (where that is later),
- register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- 2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

##### Sensitive Information

14. 1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- 2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- 3) In this Code, "sensitive information" means information the availability of which for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

##### Registration of Gifts and Hospitality

15. You must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's Monitoring Officer of the existence and nature of that gift or hospitality.

#### *PART 4*

### THE GENERAL PRINCIPLES

#### **Selflessness**

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### **Honesty and Integrity**

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

#### **Objectivity**

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### **Accountability**

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### **Openness**

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

#### **Personal Judgement**

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusion.

#### **Respect for Others**

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their ace, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.



### **Duty to Uphold the Law**

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

### **Stewardship**

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

### **Leadership**

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

John Painter

May 2007



## Consultation on Amendments to the Model Code of Conduct for Local Authority Members

Comments submitted to the Department for Communities and Local Government,  
March 2007

The Standards Board for England launched a review of the national Code of Conduct in February 2005. The Government responded with the discussion paper, *Conduct in English Local Government: the Future*, in December 2005. The DCLA, on 22 January 2007, issued a consultation paper on a draft new Model Code of Conduct, which made 20 proposals to amend the Code, and posed seven questions. This paper sets out the Council's response.

### **Unlawful Discrimination**

1. *To delete reference to unlawful discrimination (paragraph 2 (a)).*

Following an Adjudication Panel finding in January 2005, the Government proposes replacing paragraph 2(a) with a provision proscribing members from doing anything that would seriously prejudice their Authority's statutory duties in regard to equality, whilst retaining the provision that members should treat others with respect.

Noted.

### **Bullying**

2. *To add provisions specifically proscribing bullying (paragraph 2) (b))*

The Government proposes adding a specific provision to indicate that members must not bully any person, whilst accepting the Standards Board's view that the specific definition of bullying does not need to be included in the Code, and should be subject to guidance by the Standards Board.

The Council does not see a strong case for introducing a specific provision for bullying, as it considers that this can be dealt with effectively to date through the existing provisions of the Code, in particular paragraph 2 (b) to 2 (c) and 4. If a specific provision is to be introduced, the Council considers that there should be a working definition of bullying.

At present the Council follows the ACAS definition, as follows:

"... a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; and the abuse or misuse of power or authority which attempts to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress"...

The Council notes the Standards Board' view that bullying can relate not only to patterns of behaviour but also to individual incidents, and considers that the second clause of the above definition can include individual incidents.

#### **Disclosure of Confidential Information**

3. *To allow members to disclose confidential information where such disclosure is in the public interest (paragraph 3)(a)(iii).*
- Q1 *Does the proposed text on the disclosure of confidential information strike an appropriate balance between need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?*

Paragraph 3 (a) prevents the unauthorised disclosure of confidential information by members in any circumstance. The Freedom of Information Act 2000 extends rights to access to information to all citizens, including members, subject to statutory exemptions which are either absolute or qualified. If the exemption is absolute, then the information cannot be disclosed. If it is qualified, then it will also normally be subject to a public interest test which regulations require the authority's Chief Executive or Monitoring Officer to apply.

The Act has had the effect of minimising the number of occasions when members will be in possession of confidential exempt information under the terms of the Act, but in such circumstances it would be perverse if they could rely on a public interest defence to counter the public interest test applied by the authority's Chief Executive or Monitoring Officer.

If a member disagrees with a decision of his or her authority concerning the provision of information under the Act, s/he has the right of complaint to the Information Commissioner.

#### **Behaviour outside official duties (disrepute and conduct)**

- Q2 *Subject to powers being available to us to refer in the Code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members' private capacity to those activities which have already been found to be unlawful by the Courts, appropriate?*

#### **Commission of Criminal Offence before taking office**

5. *To introduce a new paragraph 4 (ii) to allow offences committed before taking office as a member to be taken into account when considering whether a member has brought his/her authority into disrepute.*

The Council's position is that disrepute should be limited to activities undertaken in an official capacity as a councillor. Individuals who offer themselves for election to public service will inevitably be subject to media and public scrutiny, and in a representative democracy the ultimate test for their personal fitness for office should be through the ballot box, and should not rest with tribunals composed of others who have never had to face election. Elected councillors will inevitably lead their life more in the public gaze than their fellow citizens, by personal (and voter) choice, but it is an additional

infringement of their personal freedom to require them, under the Code of Conduct, to apply standards to their private lives which do not apply to their fellow citizens. Democracy is enhanced by encouraging citizens to stand for public service and scrutiny; it is not enhanced by placing more disincentives in the way of public service.

Section 80 (d) of the Local Government Act 1972 disqualified anybody from holding office as a councillor who has been convicted of any offence and has passed on him/her a custodial sentence of three months or more (whether suspended or not) without the option of a fine. The Act therefore recognises that a criminal conviction not involving a custodial sentence does not disqualify people from serving as a councillor. The Code of Conduct and Standards Board should follow the law and should not seek to introduce judgements about the appropriateness of criminal conduct outside of Section 80 (d). This should be left to the electorate.

#### Using or seeking to use improper influence

6. *To amend paragraph 5 (a) by adding "or attempting to use".*
7. *To simplify paragraph 5 (b) (ii) to make clear that the improper use of the authority or the authority's resources for political purposes includes party political purposes.*

The Council welcomes these proposals.

#### The Publicity Code

8. *To add reference at paragraph 5 to the need for the member to have regard to the guidance set out in the Government's Local Authority Publicity Code.*
- Q3 *Is the Code on Recommended Practice on local authority publicity serving a useful purpose? If the publicity code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the publicity code be required to follow it, or should the current position with regard to them be maintained?*

The Council considers that the Government's local authority publicity code is a helpful document, and has developed a local protocol based on it.

The Council has concerns about any proposals to repeal Section 4 of the Local Government Act 1986 and withdraw the existing Code of Recommended Practice, if the statutory provisions on local authority publicity set out in Section 2 of that Act will still remain. The statutory provisions apply across the range of local authority activity, and have a particular reference to the purdah period leading into elections. The authority considers that there is a case for making the Code less prescriptive in certain circumstances, and in particular would welcome the removal of any limitations on the capacity of members and officers to communicate within the evolving framework of community leadership and partnership working. It is, however, our experience of local authority promotional activity is subject to challenge, in particular at times of heightened political activity, and in this context the existing code provides a helpful point of reference for interpreting how the statutory prescriptions apply in different situations.

#### Reporting breaches of the Code and prescribing intimidation

9. *To delete the duty in paragraph 7 of the existing code to report breaches of the code by other members, and add a prescription (at paragraph 2 (ii) (c) on the intimidation of complaints and witnesses.*

The Council welcomes these proposals.

The Council notes that the Government does not intend to introduce provision about making false, malicious or politically motivated allegations, as originally raised in the Standards Board Consultation Paper.

### **Gifts and Hospitality**

10. *To provide that the receipt of gifts or hospitality of over £25 in value should be an interest that should be registered as a personal interest, and also to be declared at meetings for up to five years.*
- Q4 *Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interest?*

The Council considers that this is an unnecessarily bureaucratic and intrusive requirement which is not proportionate to the transparency sought. The Council would recommend to the Government its own practice, which is that the Monitoring Officer reports each year to the Standards Committee on all notifications that he has received of gifts or hospitality accepted by Councillors in a public report which is published on the Council's website and attracts media attention.

### **Body influencing public opinion or policy**

11. *To clarify the fact that the existing reference to a body whose purposes include the influence of public opinion or policy in which the member may have a personal interest, includes any political party.*

The Council welcomes this proposal.

### **Interests of family, friends and those with a close personal association**

12. *To amend reference in the current code to friends and family by adding reference to any person with whom the member has a close personal association.*
13. *To remove the definition of family and friends.*
- Q5 *Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?*

The Council has no objection to the addition of the reference to "close personal association".

The Council is concerned that the Government's proposal would remove the current definition of "relative" in the Code, and that the Government does not think it necessary to provide a definition of "friend" or "close personal associate" in the Code. The Council has found the absence of a definition of "friend" in the current Code a difficulty, and has adopted its own local definition, based on Standards Board guidance.

It would look to the Standards Board to provide similar guidance on a definition of "family" and "close personal associate".

#### Definition of personal interest

14. *To replace reference in paragraph 8 to the inhabitants of an authority's area with provision that members should not be required to register an interest in a matter unless the interest is greater than that of the majority of the inhabitants of the ward affected by the matter.*

The Council welcomes this narrowing of definition to provide a more locally-based focus, and to require that an interest would arise only when the interest will be higher than most people in the local area affected by the matter, and not where the interest is shared by a substantial number of inhabitants in the authority's area.

#### Disclosure of personal interests

15. *To amend paragraph 8 (iv) so that the rules on the disclosure of interests at a meeting in respect of a family member, friend or person with a close personal association will only apply if the member is aware or ought reasonably to be aware of the interest held by that person.*

The Council welcomes this proposal.

#### Public service interest

16. *To create a new category of "public service interest", which arises where a member is also a member of another public body, and for the public service interest only to be declared at meetings where the member speaks on the relevant issue (paragraph 8) (ii) and 8 (vii).*

The Council welcomes this proposal, and also welcomes the definition offered of what is meant by "public service interest", ie an interest which arises where a member is also a member of another public body to which they have been appointed or nominated by the authority, or of which they are a member in their own right.

The Council also welcomes the modification that would remove the requirement of members to declare public service interests at the start of the relevant business of the meeting, and instead would allow the interest to be declared only at such a time as a member speaks on a relevant issue.

#### Prejudicial interest - list of exemptions

17. *To simplify and amend the list of exemptions where members should not regard themselves as having a prejudicial interest (paragraph 9 (ii)(b)).*
- Q6 *Would it be appropriate for new exemptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?*

The Council welcomes the three new items that have been added to the list of interests which are not to be regarded as prejudicial, as follows:

- indemnities
- the setting of Council Tax
- considering whether or not the member should become a Freeman of the authority.

It also welcomes the proposal to amend the Local Authority's (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a Standards Committee into his or her conduct in order to be able to defend himself or herself.

#### **Overview and Scrutiny Committees**

18. *To provide that members are excluded from overview and scrutiny committees where they ask scrutinising decisions, including decisions made by the authority's Executive, which they were involved in making (paragraph 10).*

The Council agrees with these proposed changes, which will have the effect of clarifying that members may not scrutinise a decision which they were involved personally in taking.

#### **Participation in relation to prejudicial interest**

19. *To provide a clearer prejudicial interest as to apply for public service interest and where members intend to make representations (paragraphs 9 and 11).*
- Q7 *Is the proposed text, relaxing the rules to allow an increased representation at meetings, including when members intend to make representations, answer questions or give evidence, appropriate?*

The Council welcomes this proposal.

#### **Sensitive information**

20. *To provide for sensitive information in respect of private interests not to be included on the Register of Interests where revealing it is likely to lead to the member or those he/she lives with being subject to violence or intimidation (paragraphs 8, 5 and 13).*

The Council welcomes this amendment and the associated proposal that, whilst the member with such an interest would still have to declare the existence of a personal interest at the meeting, s/he would not have to disclose the details of that interest.

**John Painter**  
Monitoring Officer

March 2007  
First version





APPENDIX F

Date	Description of Gifts and approximate value	Value	Councillor's Name	Offered by	Declined or accepted
16.06.06	4 x tickets for BBC Prom	No cost	McKenzie	Hexagon	Accepted
17.07.06	1 x ticket 'Naach Gana' Hexagon - £5	£5	Green	Indian Community Centre	Accepted
17.07.06	2 x Womad Tickets £110 - per Cllr	£220	Ballsdon	RBC	Accepted
		£220	Benson	RBC	Accepted
		£220	Byrne	RBC	Accepted
		£220	Crisp	RBC	Accepted
		£220	Cumpsty	RBC	Accepted
		£220	Edwards	RBC	Accepted
		£220	Ennis	RBC	Accepted
		£220	Fry	RBC	Accepted
		£220	Gittings	RBC	Accepted
		£220	Goodall	RBC	Accepted
		£220	Green	RBC	Accepted
		£220	Grieve	RBC	Accepted
		£220	Hanley	RBC	Accepted
	x 7 tickets	£990	Hartley	RBC	Accepted
		£220	Hendry	RBC	Accepted
	1 additional ticket	£330	Hoskin	RBC	Accepted
		£220	Howarth	RBC	Accepted
		£220	Janjua	RBC	Accepted
		£220	Jones T	RBC	Accepted
		£220	Kayes	RBC	Accepted
		£220	Khan	RBC	Accepted
		£220	Lloyd	RBC	Accepted
		£220	Maskell	RBC	Accepted
		£220	McKenzie	RBC	Accepted
		£220	Merriott	RBC	Accepted

		£220	Orton J	RBC	Accepted
		£220	Orton M	RBC	Accepted
		£220	Page	RBC	Accepted
		£220	Ralph	RBC	Accepted
		£220	Rynn	RBC	Accepted
		£220	Singleton-White	RBC	Accepted
		£220	Skeats	RBC	Accepted
		£220	Stainthorp R	RBC	Accepted
		£220	Tickner	RBC	Accepted
	11 additional tickets	£1,430	Waite	RBC	Accepted
	1 additional ticket	£330	Wilton	RBC	Accepted
26.07.06	2 x tickets to Winters Tale	£44	Grieve	Progress Theatre	Accepted
24.07.06	2 x tickets to Shakespeare in the Ruins	£44	Singleton-White	Progress Theatre	Accepted
27.07.06	2 x tickets Abbey Ruins - Shakespeare	£44	Green	Progress Theatre	Accepted
02.08.06	1 x Indian Music and Dance Night	£5	Beard	Hexagon	Accepted
16.08.06	Buffet Meal	£10	Grieve	Affinity	Accepted
24.08.06	Flowers	£15	Ralph	Constituent	Accepted
25.08.06	Wedding Invite to Town Hall reception		Ralph	Constituent	Accepted
25.08.06	Reading Festival tickets - 2 per Councillor		Benson	Mean Fiddler	Accepted
			Byrne		Accepted
			Crisp		Accepted
			Cumpsty		Accepted
			Edwards		Accepted
			Ennis		Accepted
			Fry		Accepted
			Gittings		Accepted
			Goodall		Accepted
			Hartley		Accepted
			Hendry		Accepted
			Hoskin		Accepted

				Howarth		Accepted
				Kayes		Accepted
				McKenzie		Accepted
				Merriott		Accepted
				Ralph		Accepted
				Singleton-White		Accepted
				Skeats		Accepted
				Stainthorp R		Accepted
				Stainthorp S		Accepted
				Sutton		Accepted
				Waite		Accepted
				Wilton		Accepted
26.09.06		Lunch	£15	Ballsdon	Constituent	Accepted
01.09.06		Bouquet of Flowers	£20 approx	Lovelock	Constituent	Accepted
17.10.06		Chocolates	£5	Lovelock	Constituent	Accepted
01.11.06		Lunch at Renaissance Hotel for Pride of Reading Awards		Green	Organising Committee	Accepted
20.12.06		2 x Tickets for Reading Phoenix Choir		Wilton	Phoenix Choir	Accepted
21.02.07		Reimbursement of photo	£5	Ballsdon	Constituent	Accepted
28.02.07		Borrowed a book		Ballsdon	Developer	Accepted
25.04.07		Bouquet of Flowers	£20	Ballsdon	Residents of Hardy, Cav Heights	Accepted

