



Local Protocol

on

Allegations of Misconduct by Members

**Town Hall
Castle Circus
TORQUAY
Devon
TQ1 3DR**

Contents	Page
1. Interpretation.....	5-263
2. Introduction and summary.....	5-263
3. Modification of procedure	5-263
4. What can be dealt with dealt with under this local protocol	5-263
5. What we cannot deal with under this protocol	5-269
6. Acknowledging receipt of a complaint.....	5-269
7. Anonymous complaints.....	5-265
8. Pre-assessment reports and enquiries	5-265
9. Assessment criteria	5-266
10. Access to meetings and decision making.....	5-267
11. Confidentiality.....	5-268
12. Withdrawing complaints.....	5-268
13. Multiple and vexatious complaints.....	5-269
14. Case history and retention policy.....	5-270
15. Referrals Sub-Committee.....	5-271
15.6 Decision to Take No Action.....	5-272
15.7 Referral of a Complaint to the Monitoring Officer for Further Action.....	5-272
15.14 Referral of a Complaint to Standards for England.....	5-273
16. Notification of Referrals Sub-Committee Decision and Right of Review	5-275
17. Review Sub-Committee.....	5-275
18. Notification of Review Sub-Committee Decision.....	5-276
19. Investigation Reports.....	5-276
20. Hearings Sub-Committee.....	5-276
21. Conflicts of Interest.....	5-277
22. Local Government Ombudsman.....	5-277

1. Interpretation

- 1.1 'Member' means the member of the Council who is the subject of the allegation unless stated otherwise. 'Member' includes the Mayor, all elected members of Torbay Council and Brixham Town Council and all non-elected co-opted members of any committee (including the Standards Committee and the Overview and Scrutiny Board) (or any sub-committee) irrespective of whether they have any voting rights and also the member's nominated representative.
- 1.2 'Investigator' means the Monitoring Officer or other investigating officer, and his/her nominated representative. (The Monitoring Officer is an employee appointed by the Council with responsibility for ensuring that the Council acts lawfully and properly in everything it does.)
- 1.3 'The Democratic Services Officer' means an officer of the authority responsible for supporting the Committee/Sub-Committee's discharge of its functions and recording the decisions of the Committee/Sub-Committee.
- 1.4 'Legal Advisor' means the officer responsible for providing legal advice to the Committee/Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- 1.5 'The Chairman' refers to the person presiding at the Committee/Sub-Committee.

2. Introduction and Summary

- 2.1 This Protocol has been developed in accordance with the guidance issued by Standards for England. It should be read in conjunction with the "Local Assessment of Complaints" guidance published by Standards for England and The Standards Committee (England) Regulations 2008.
- 2.2 The Council has adopted a number of local protocols which do not form part of the Code of Conduct for Members. Allegations of a breach of a local protocol will also be dealt with in accordance with this Protocol.

3. What Can Be Dealt With Under This Local Protocol

- 3.1 Complaints about the behaviour of a member of Torbay Council or Brixham Town Council must be made in writing (by letter or email) using the official form obtainable from Democratic Services, and addressed to the Monitoring Officer. In line with the requirements of the Disability Discrimination Act 2000, the Council can make reasonable arrangements to assist people if they have a disability that prevents them from making a complaint in writing.
- 3.2 In order to avoid unnecessary use of public resources, the complainant must specify on the form what the subject member is alleged to have said or done, any corroborating evidence or details of people who will be able to provide it and a copy of any documentary evidence the complainant needs to rely on.
- 3.3 Complaints must be about a member breaking any part of their Council's Code of Conduct. This includes:

- Unlawfully discriminating against someone.
- Failing to treat people with respect.
- Bullying.
- Doing something to prevent those who work for the Council from being unbiased.
- Revealing information that was given in confidence, or stopping someone getting information they are entitled to by law.
- Damaging the reputation of their office or Council.
- Using their position improperly to their own or someone else's advantage or disadvantage.
- Misusing the Council's resources.
- Allowing the Council's resources to be misused for the activities of a registered political party.
- Failing to register financial or other interests.
- Failing to reveal a personal interest at a meeting.
- Taking part in a meeting or making a decision where the member has an interest that is so significant that it is likely to affect his or her judgment.
- Failing to register any gifts or hospitality they have received in their role as a member, worth over £25.00.

4. What We Cannot Deal With Under This Protocol

- 4.1 There are some complaints that are not legally capable of being dealt with under this procedure which is solely for dealing with alleged member misconduct:
- Complaints about policy or decisions made.
 - Complaints where a member is not named.
 - Complaints that are not in writing (with the exception set out in paragraph 3.2 above).
 - Incidents or actions that are not covered by the Code of Conduct or one of the Council's local protocols.
 - Incidents that are about a fault in the way the Council has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman.
 - Complaints about people employed by Torbay Council or Brixham Town Council – they will be dealt with through the Corporate Complaints Procedures.
 - Complaints about the way in which the Council conducts and records its meetings – these should be referred direct to the Monitoring Officer of Torbay Council.

5. Acknowledging Receipt of a Complaint

- 5.1 Within five working days of receiving a complaint against a member, the Democratic Services Officer on behalf of the Monitoring Officer will write to the complainant to acknowledge receipt of their complaint.

6. Anonymous Complaints

- 6.1 Further action will not be taken in respect of anonymous complaints unless to do so would be in the public interest. For example if an allegation is made of a criminal nature the allegation may be referred to the Police where evidence is provided to support the allegation.
- 6.2 Details of the allegation will be kept on the Local Assessment Database for future reference and monitoring purposes.

7. Pre-Assessment Reports and Enquiries

- 7.1 Where a complaint is not about an allegation of member misconduct or there is insufficient information provided on the form referred to in 4.2, the Monitoring Officer will inform the complainant of the position within five working days of receipt. The Monitoring Officer may carry out a preliminary investigation in accordance with SFE guidance, to assist a decision (in consultation with the Chairman of the Standards Committee).
- 7.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she may approach the member complained against and ask whether the member admits, denies or otherwise wishes to comment on the alleged breach and whether he/she would be prepared to offer an apology or undertake other remedial action.
- 7.3 The Monitoring Officer will make preliminary inquiries and then decide whether to refer the complaint to the Referrals Subcommittee (having assessed the situation in consultation with the Chairman of the Standards Committee) or to respond to the complainant explaining why the matter is not being taken further. In reaching decisions on the assessment, the Monitoring Officer and the Referrals Subcommittee will take full account of Standards for England Guidance and decided case law.

8. Access to Meetings and Decision Making

- 8.1 In accordance with Regulation 8 of The Standards Committee (England) Regulations 2008, meetings of the Referrals Sub-Committee and Review Sub-Committee will not be open to the public and are not subject to the notice and publicity requirements of Part 5A of the Local Government Act 1972. The press, members, officers (except the Monitoring Officer and Democratic Services Officer), members of the public and complainant are not permitted to attend meetings of the Referrals or Review Sub-Committees.
- 8.2 Agendas and papers for meetings of the Referrals and Review Sub-Committees will normally be sent to the Monitoring Officer, Democratic Services Officer and members of the Sub-Committee at least four clear working days before the date of the meeting. There is entitlement to copies of agendas, reports and associated documents, minutes and background papers of meetings of the Referrals and Review Sub-Committees in accordance with Regulation 8, but such information will be available to the member once the Monitoring Officer is satisfied that sufficient investigation or other action has been undertaken and that the potential prejudice to any investigation or the public interest in withholding the information no longer applies.
- 8.3 In accordance with paragraph 8(5)(c)(iv) of the Standards Committee (England) Regulations 2008, a summary of the Referrals Sub-Committee or Review Sub-Committee's decision will be available to the public upon request. This information will be kept for six years from the date of the decision of the Sub-Committee.

9. Confidentiality

- 9.1 The member will (subject to 11.2) be sent a summary of the complaint within five working days of receipt unless the Monitoring Officer believes that this would be likely to:

- (a) put the complainant at risk of bullying, harassment or intimidation;
- (c) put other witnesses at risk of bullying, harassment or intimidation;
- (d) prejudice any investigation;
- (e) prejudice any other action from being taken; and/or
- (f) not be in the public interest.

- 9.2 Requests for the complainant's name or details of the complaint to be kept confidential will not automatically be granted. The Democratic Services Officer will inform the complainant of the Monitoring Officer's decision within five working days of receipt. If a complainant's request for confidentiality is not granted, the Council will usually allow the complainant the option of withdrawing their complaint.
- 9.3 However, where the matter complained about is very serious, the Council will nevertheless proceed with an investigation or other action (such as referring a possible criminal matter to the Police). In these exceptional circumstances the complainant's identity may become known or have to be given out, even if the complainant has requested confidentiality.
- 9.4 Where a request is made for confidentiality the member complained against will not be notified of the receipt of the complaint against them until after the Monitoring Officer has considered the complaint and request for confidentiality.

10. Referrals Sub-Committee

- 10.1 The Referrals Sub-Committee will be made up of two independent members of the Standards Committee and one Torbay Councillor (and one Brixham Town Councillor if the complaint is about a Town Councillor). The quorum for the Sub-Committee is three members including at least one independent member of the Standards Committee who must chair the meeting.
- 10.2 In order to avoid unnecessary use of public resources, the Referrals Sub-Committee must be satisfied that there is some degree of likelihood that appropriate evidence may be found and that, the complaint if proven, might be a breach of the Code or local protocol. The complainant must provide sufficient information to enable the Referrals Sub-Committee to conclude that there is prima facie evidence of a breach of the Code, otherwise the Sub-Committee is unlikely to refer the complaint for investigation or other action; a similar position applies if the complaint is vexatious, malicious, politically motivated, tit-for-tat or made at least six months after the event unless the pattern of behaviour complained about has been recently repeated or the evidence relied upon is predominantly documentary.
- 10.3 The Sub-Committee will meet within twenty working days of the complaint being received and will consider any request for confidentiality or withdrawal of the complaint. It will then reach one of the following decisions in respect of the complaint:
- (a) Refer the complaint to the monitoring officer of the Council concerned (which may be the monitoring officer of another Council) for investigation or other action.

- (b) Refer the complaint to Standards for England.
- (c) Decide that no action should be taken in respect of the complaint.

10.4 When a matter is referred for investigation or other action, it does not mean that the Referrals Sub-Committee (or on appeal, the Review Sub-Committee) has made a decision on the justification for the complaint or whether there has been a breach of the Code of Conduct. It simply means that it believes the alleged conduct, if proven may amount to a failure to comply with the Code or local protocol and that some action should be taken in response to the complaint. The Referrals Sub-Committee will only take into account information in the agenda papers or provided by the Monitoring Officer in reaching its decision.

Decision to Take No Action

- 10.5 The Referrals Sub-Committee may decide that a complaint will not be investigated or referred for other action for one or more of a number of reasons. These reasons could include those listed in paragraph 4.1. In addition, the Sub-committee may decide not to investigate the complaint because:
- the complainant has not provided and there is insufficient likelihood of adequate evidence being found which might indicate a positive breach of the Code to justify the use of resources involved in an investigation.
 - the complaint is not serious enough to justify the use of resources involved in an investigation;
 - the complaint appears to be simply malicious, politically motivated or tit-for-tat;
 - the complaint has already been investigated and there is no significant new information; or
 - the length of time that has elapsed since the alleged conduct took place and the complaint was made was too long ago to merit any action being taken.

Referral of a Complaint to the Monitoring Officer for Further Action

- 10.6 When the Referrals Sub-Committee considers a new complaint, it can decide that action other than an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interest of good governance to undertake or complete an investigation into an allegation of misconduct. The Referrals Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action.
- 10.7 The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct may indicate that there is a wider problem. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. This may be the simplest and most cost effective way of getting the matter resolved, helping the Council work more effectively and of avoiding similar complaints in the future.
- 10.8 The Referrals Sub-Committee can decide that the other action should be applied to the member complained against or that working practices or policies should be amended in light of the issues raised. Other action may be appropriate if it appears that members have a poor understanding of the Code or authority procedures. Evidence of this may

include:

- (a) a number of members failing to comply with the same paragraph of the Code;
- (b) officers giving incorrect advice;
- (c) failure to adopt the Code;
- (d) inadequate or incomplete protocols for use of authority resources.

Other action may also be appropriate where a breakdown in relationships within the Council is apparent; evidence of this may include:

- (a) a pattern of allegations of disrespect, bullying or harassment;
- (b) factionalised groupings within the Council;
- (c) a series of ‘tit-for-tat’ allegations;
- (d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

10.9 The Referrals Sub-Committee will take a practical approach to considering other action, taking into account the needs of the Council and of Brixham Town Council (where appropriate). It will be made clear to everyone involved in the process that the decision to refer a matter for other action is made as an alternative to investigation. Where other action is agreed no conclusion or decision will be made on whether the member complained against failed to comply with the Code of Conduct or local protocol.

10.10 Complaints that have been referred for other action will not be referred back to the Referrals Subcommittee if the other action is perceived to have failed. This would be unfair to the member complained against and a case may be jeopardised if it has been discussed as part of the mediation process.

10.11 The following are some examples of alternatives to investigation:

- (a) arranging for the member complained against to attend a training course;
- (b) arranging for the member complained against and the complainant to engage in a process of conciliation; or
- (c) instituting changes to the Council’s procedures if they have given rise to the complaint.

10.12 Within three months of the date the direction for ‘other action’ was received by the Monitoring Officer, he/she will submit a written report to the Referrals Sub-Committee giving details of the action taken or proposed to comply with the direction. If the Referrals Sub-Committee is not satisfied with the action specified in the report, it shall give a further direction to the Monitoring Officer. If the Sub-Committee is satisfied with the action specified in the report it will give written notice to that effect to the complainant, member complained against (and Town Clerk of Brixham Town Council if the complaint is about a Town Councillor).

Referral of a Complaint to Standards for England

- 10.13 Sometimes there will be issues in a case, or public interest considerations, which make it difficult for Torbay Council to deal with a complaint fairly and speedily. In these cases the Referrals Sub-Committee may wish to refer a complaint to Standards for England (SFE). The reasons for doing this are set out in Standards for England guidance. If the Referrals Sub-Committee decides to refer a matter to SFE it should decide which paragraphs of the Code of Conduct it believes the allegation refers to and the reasons why it cannot be dealt with locally.
- 10.14 Standards for England may accept such cases for investigation, take no action or refer cases back to the Standards Committee which referred the case to them. The SFE will normally inform the Monitoring Officer within ten working days whether they will accept a case or whether they will refer it back to the Standards Committee, with a reason for doing so. There is no right of appeal against Standards for England's decision.
- 10.15 If Standards for England decides not to investigate a case referred to them, they may offer guidance or give a direction to the Standards Committee, which may assist them in making their decision. They may also refer the matter with a direction to the Monitoring Officer to deal with.
- 10.16 Within three months of the date the direction for 'other action' was received by the Monitoring Officer, he/she will submit a written report to the Ethical Standards Officer (ESO) giving details of the action taken or proposed to comply with the direction. If the ESO is satisfied with the action specified in the report he/she will give written notice to that effect to the complainant, member complained against (and Town Clerk of Brixham Town Council if the complaint is about a Town Councillor). If the ESO is not satisfied with the action specified in the report, he/she may require the Monitoring Officer to arrange for a statement to be published in at least one local newspaper giving:
- (a) details of the direction given by the Ethical Standards Officer (ESO);
 - (b) the ESO's reasons for being dissatisfied; and
 - (c) the Monitoring Officer's response to the ESO's reasons for being dissatisfied.
- 10.17 In exceptional circumstance, Standards for England may decide to take no further action on a complaint referred to them by the Referrals Sub-Committee. This is likely to be where circumstances have changed so much that there would be little benefit arising from investigation or other action, or because they do not consider the complaint discloses a breach of the Code of Conduct.
- 10.18 If Standards for England refers a complaint back to the Standards Committee, the Referrals Sub-Committee will meet within 20 working days of receiving the referral, and decide what action should be taken next. The Referrals Sub-Committee will make one of the following decisions:
- (a) not to take any further action;
 - (b) refer the matter to the Monitoring Officer for local investigation; or
 - (c) refer the matter to the Monitoring Officer for some other form of action,

As the Referrals Sub-Committee initially decided that the matter was serious enough to be referred to Standards for England for investigation, it is likely that it will still think that it should be investigated. However, if the circumstances of the complaint have changed since the original decision, it may be reasonable to make a different decision. The Democratic Services Officer write to the complainant, member complained against (and Town Clerk of Brixham Town Council if the complaint is about a Town Councillor) and advise them of the Referrals Sub-Committee's decision and reasons for their decision, normally within five working days of the meeting.

11. Notification of Referrals Sub-Committee Decision and Right of Review

- 11.1 If the Referrals Sub-Committee decides not to refer a complaint for investigation or other action, the Democratic Services Officer will write to the complainant, member complained against (and the Town Clerk of Brixham Town Council if the complaint is about a Town Councillor) and explain why, normally within five working days. The complainant has a right to appeal to the Review Sub-Committee about a decision by the Referrals Subcommittee not to refer the complaint for investigation or other action. This must be done within 30 working days of receipt of the Referrals Sub-Committee's decision. Further information is set out in paragraph 17.
- 11.2 If the Referrals Sub-Committee decides to refer the complaint for investigation or other action the Democratic Services Officer will within five working days write to the complainant, member complained against (and the Town Clerk of Brixham Town Council if the complaint is about a Town Councillor) and explain why.

12. Review Sub-Committee

- 12.1 If a complainant is dissatisfied with the outcome of the Referrals Sub-Committee's consideration, they may appeal, in writing, to the Review Sub-Committee. All of the above requirements applicable to the Referrals Sub-Committee apply to the Review Sub-Committee.
- 12.2 The Review Sub-Committee will normally be made up of two independent members of the Standards Committee and one Torbay Councillor (and one Brixham Town Councillor if the complaint is about a Town Councillor). These will be different members from those who sat on the original Referrals Sub-Committee. The quorum for the Sub-Committee is three members including at least one independent member of the Standards Committee who must chair the meeting.
- 12.3 The Review Sub-Committee will review a decision of the Referrals Sub-Committee to take no action and will also take into account any additional evidence submitted to it by the complainant, member complained about or anybody else (e.g. the Monitoring Officer). A complainant must submit a request for a decision to be reviewed within 30 working days of receiving the decision of the Referrals Sub-Committee.
- 12.4 Within five working days of receiving a request for a review of the Referrals Sub-Committee's decision the Democratic Services Officer will write to the complainant and member complained against to acknowledge receipt of the request for review.
- 12.5 Review Sub-Committee will reach one of the following decisions within twenty working days of the receipt of a request for a review:

- (a) Uphold the original decision of the Referrals Sub-Committee not to refer the complaint for investigation or other action.
- (b) Overturn the decision of the Referrals Sub-Committee and refer the complaint to Torbay Council's Monitoring Officer for investigation or other action.
- (c) Overturn the decision of the Referrals Sub-Committee and refer the complaint to Standards for England for investigation.

13. Notification of Review Sub-Committee Decision

- 13.1 The Democratic Services Officer will write to the complainant, member complained against (and the Town Clerk of Brixham Town Council if the complaint is about a Town Councillor) and advise them of the Review Sub-Committee's decision and reasons for their decision, normally within five working days of the meeting.

14. Investigation Reports

- 14.1 When an investigation has been completed the Referrals Sub-Committee will consider the investigation report and may ask the Investigator questions (but will not interview witnesses or take representations) in deciding one of the following actions:
- (a) it accepts the investigating officer's findings of no failure to observe the Code of Conduct or local protocol;
 - (b) the matter should be referred for consideration at a hearing before the Hearings Sub-Committee; or
 - (c) the matter should be referred to the Adjudication Panel for determination.
- 14.2 The Sub-Committee may only make a finding under paragraph 15.1(c) if it has decided that the action it could take against the member would be insufficient if a finding of failure was made and if the President or Deputy President of the Adjudication Panel has agreed to accept a referral.
- ### **15. Hearings Sub-Committee**
- 15.1 Where the Referrals Sub-Committee refers an investigation report to the Hearings Sub-Committee, the Hearings Sub-Committee will hold a formal hearing into the matter.
- 15.2 The Hearings Sub-Committee will normally be made up of two independent members of the Standards Committee and one Torbay Councillor (and one Brixham Town Councillor if the complaint is about a Town Councillor). The quorum for the Sub-Committee is three members including at least one independent member of the Standards Committee who must chair the meeting. As the Referrals and Review Sub-Committees make no findings of fact in respect of the complaint, members who sat on the Referrals or Review Sub-Committee do not automatically have a conflict of interest and may sit on the Hearings Sub-Committee.
- 15.3 The Sub-Committee has the power to issue one or more sanctions including power to suspend or partially suspend a member for up to six months and to restrict a member's

access to Council buildings or resources. The process for dealing with this is set out in the Local Protocol on Local Investigation and Determination of Allegations of Misconduct by Members which is available on the Council's website www.torbay.gov.uk/constitution.

16. Conflicts of Interest

16.1 Members and officers shall not take part in meetings of the Referrals, Review of Hearings Sub-Committee where any of the following circumstances apply:

- (a) The complaint is likely to affect the well-being or financial position of that member or officer or the well-being or financial position of a friend, family member of person with whom they hold a close association.
- (b) The member or officer is directly or indirectly involved in the case in any way.
- (c) A family member, friend or close associate of the member or officer is involved in the case.
- (d) The member or officer has an interest in any matter relating to the case. For example, it concerns a member's failure to declare an interest in a planning application in which the member or officer has an interest. This is despite the fact that the outcome of any investigation or other action could not affect the decision reached on the application.

16.2 An officer involved in the above subcommittee process must not be involved in the investigation of that matter.

17. Role of Investigator

17.1 The function of the Investigator 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/ Sub-Committee, to enable the Committee/Sub-Committee to come to an informed decision as to whether the member has failed to comply with the Council's Code of Conduct for Members or local protocol. The Standards Committee/Sub-Committee acts in an inquisitorial manner seeking the truth in relation to the conduct of the member on the balance of the information available to it. The Standards Committee/Sub-Committee is able to commission further investigation or information where it needs to do so in order to come to a decision. It is essential that the Investigator at all times acts in a manner that is completely impartial and fair to all parties.

17.2 Within three working days of a Referrals Sub-Committee decision that a matter be investigated the Monitoring Officer will:

- a) begin to investigate the matter personally; or
- b) appoint an Investigator and instruct him/her to conduct an investigation of the allegation and to report their findings to the Monitoring Officer and subsequently to the Referrals Sub-Committee.

17.3 The Investigator may appoint persons to assist him/her in the conduct of his/her functions.

17.4 A local investigation will be carried out in accordance with the guidance provided by SFE

and completed (i.e. a final report produced) within eight weeks from the date the Referrals Sub-Committee resolves that an allegation of a breach of the Code of Conduct or a local protocol should be investigated. The timescale for investigation may take longer when dealing with complex complaints or where large numbers of witnesses need to be interviewed. In such cases the Investigator and/or Monitoring Officer will ensure that the process is dealt with in a timely manner and concluded as soon as reasonably practicable.

18. Confidentiality

- 18.1 Information gathered during an investigation will be treated as confidential until it is reproduced in the form of a final report. People who are involved in the investigation or who are interviewed will be asked to maintain confidentiality and members will be reminded of their obligation under paragraph 3(a) of the Code of Conduct not to disclose information they have received in confidence.
- 18.2 If a draft report is issued on the outcome of the investigation it will be marked “confidential”, to preserve the integrity of any further investigation that may need to be carried out.

19. Production of Documents, Information and Explanations

- 19.1 In the course of the investigation, the Investigator (and any person authorised on his/her behalf) may make such enquiries of any person, and request any person to provide any document, information or explanation, as he/she thinks necessary for the purposes of carrying out the investigation.

20. Interviews

20.1 Timescale

The Investigator will make arrangements for interview within five working days of being appointed. If it subsequently becomes apparent that there needs to be further interviews (or other evidence provided) this will be dealt with as soon as reasonably practicable.

20.2 Requesting attendance

In the course of the investigation the Investigator may request any person to attend and appear before him/her or otherwise provide advice or information for the purpose of paragraph 9, as he/she thinks necessary for the purposes of carrying out the investigation. The Investigator will request members and other persons to provide responses within five working days of receipt of the request.

20.3 Representation

Any person who appears before the Investigator may arrange to be accompanied (at their own expense) by one friend/adviser provided that they are not someone who is a witness.

20.4 Notes of interviews

Where reasonably practicable, following the interview the Investigator will produce a written note of the material points of the interview, provide two copies of that note to the person 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

21. Refer Back to Standards for England

- 21.1 At any stage prior to the completion of the investigation, the Investigator may (after consulting the Monitoring Officer, if separate) suspend his/her investigation and refer the matter, together with any supporting information, to Standards for England for an Ethical Standards Officer to consider.
- 21.2 When a matter is referred to an Ethical Standards Officer (ESO), they are required to respond to the request within 21 days of receipt and may:
- (a) direct that the matter be referred to an ESO for him/her to undertake an investigation, in which case the Monitoring Officer concerned will terminate the investigation; or
 - (b) direct that the Monitoring Officer concerned continue his/her investigation in accordance with the Local Authority Standards Committee Regulations 2008 in which case the Monitoring Officer concerned will continue his/her investigation and may not make any further request under paragraph 5 of the Regulations in respect of that matter.

22. Investigator's Report

- 22.1 The Investigator will decide whether it is appropriate to produce a draft report or to produce a final report without first producing a draft report; a draft report will only be produced in the case of unusually lengthy or complex investigations. In either event, the Investigator may wish to confirm the accuracy of parts of the report directly with the parties and/or any other persons interviewed during the investigation.
- 22.2 The draft report will be marked "confidential" and "draft". It will also make clear that the draft report does not necessarily represent the Investigator's final findings and that a final report will be presented to the Standards Committee/Sub-Committee once the Investigator has considered any comments received on the draft report.
- 22.3 The Investigator will then send a copy of his/her draft report to the member and the person making the allegation and will normally request that they send any comments on the draft report to him/her within five working days.
- 22.4 Within five working days after the expiry of that period (or such extended period as the Investigator may allow), the Investigator will reconsider his/her draft report in the light of any comments received and will produce and send to the Monitoring Officer a final report.

23. Meetings of the Referrals Sub-Committee and the Hearings Sub-Committee

- 23.1 The Standards Committee (England) Regulations 2008 allow for the investigation report to be considered as exempt information. The Regulations also allow for the member complained about to require that the authority does not publish a notice stating that the sub-committee has found that there has been no failure to comply with the Code. In the event of a finding of no failure to comply with the Code, arrangements will be made to publish such a notice, unless the member complained about requests at the end of the meeting that such a notice be not published. In view of this legal option available to the member complained about, the investigation report will be treated as exempt information in accordance with Regulation 8(6) unless and until a decision is made that it should be referred to a hearings

sub-committee.

- 23.2 If a decision is made by the Referrals Sub-Committee that the investigation report should be referred to the Hearings Sub-Committee, in accordance with the statutory procedures it will cease to be regarded as exempt information unless the Referrals Sub-Committee resolves that the subject member's interest in limiting publication of an improper allegation yet to be determined by the Hearing's subcommittee should outweigh the public interest in transparent decision making.
- 23.3 Regulation 8(6) of the Standards Committee (England) Regulations 2008 allows the consideration of the investigation report to be considered as exempt information.

24. Rights and Responsibilities of Members and the Investigator

- 24.1 No member, including the member complained about, has any right to address the Referrals or Review Sub-Committee. No member may address the Hearings Sub-Committee other than in accordance with the procedures laid down in accordance with the Standards Committee (England) Regulations 2008 and Standards for England Guidance.
- 24.2 The investigator will interview the member complained about and the complainant plus other persons who they put forward, and others, whom the investigator reasonably considers could further assist the investigation. Neither the member complained about or the complainant should seek to interview such other persons themselves but they may supply the investigator with any documents they would like the investigator to examine as part of the investigation or the contact details of people they would like the investigator to interview.
- 24.3 It is a breach of the Code of Conduct to attempt to intimidate the investigator or members of the Standards Committee in relation to the complaint. No attempt should be made to communicate with members of the Standards Committee about any matter relevant to the investigation.

Anyone seeking to participate in the investigation will be directed to the Monitoring Officer or the Investigating Officer in the first instance.

To avoid misunderstanding, any communication of this nature should be made in writing wherever possible.

- 24.4 Anyone involved with the investigation will be advised that they may be comprising their position if they communicate with the media on matters relevant to the investigation whilst the investigation is ongoing and that any communication that is made should emanate from the Council's communication team. It is the responsibility of the Investigator to seek to discover the facts in an impartial and thorough manner in accordance with Standards for England Guidance. It is the responsibility of the Standards Hearings Sub-Committee to determine the facts and decide whether there has been a failure to comply with the Code of Conduct.

25. Processing the Investigators Report

- 25.1 Within three working days from receipt of the Investigator's report the Democratic Services Manager will write to the complainant and the members complained about

- (a) enclosing a copy of the report
- (b) informing them of the date of the Referrals Sub-Committee at which it will be considered.

25.2 The Referrals Sub-Committee will consider the report and make a finding that

- (a) it accepts the Investigator's finding of no breach
or
- (b) the matter should be referred to the Hearings Sub-Committee or the Adjudication Panel for England.

25.3 Within three days after the Referrals Sub-Committee decision, the Democratic Services Manager will

- (a) give written notice of the decision to
 - (i) the member complained about
 - (ii) the Investigator
 - (iii) the complainant

and

- (b) if the decision is to accept that no breach has been committed, arrange for a notice to be published in at least one newspaper circulating in the Borough of Torbay (unless the members concerned is found not to have committed any breach of the Code of Conduct and/or local protocol(s) and requests that it is not published) stating that the Standards Committee has found that there has not been a failure on the part of the member whom the finding of no failure relates to, to comply with the Code of Conduct for Members (and/or local protocols).

25.4 If the Referrals Sub-Committee has referred the matter to the Hearings Sub-Committee, the Democratic Services Manager will, within three working days, write to the member complained about asking them to complete forms prescribed by Standards for England and return them to the Democratic Services Manager within five working days. If the member does not reply, a reminder will be sent allowing a further five working days to reply, after which, if no reply, it will be assumed that the member does not dispute the findings of fact and does not wish to participate in the hearing.

25.5 Within three working days of receipt of the completed forms, the Democratic Services Manager will write to the Investigator asking them to complete a further form within five working days.

26.

26.1 Pre-Hearing Process

Within five working days of the receipt of the completed form from the Investigator by the

Democratic Services Manager, a Pre-Hearing discussion will be held between the Monitoring Officer (or other legal advisor to the Sub-Committee if the Monitoring Officer is the Investigator) and the Complainant to deal with the procedural issues.

26.2 Pre-Hearing Process Summary

Once the Pre-Hearing discussion has taken place, the Monitoring Officer will address the issues raised and prepare a Pre-Hearing Process Summary setting out the following details:

- (a) The findings of fact in the Investigator's report that are agreed.
- (b) The findings of fact in the Investigator's report that are not agreed.
- (c) Whether or not the member of the Investigator will attend or be represented.
- (d) The names of any witnesses who will be asked to give evidence.
- (e) An outline of the proposed procedure for the hearing.
- (f) Any other matters the Monitoring Officer considers appropriate.

The Monitoring Officer will send a copy of the Pre-Hearing Process Summary to the Member complained against, the complainant and the members of the Hearings Sub-Committee within three working days after the conclusion of the Pre-Hearing Meeting.

27. Consideration of Investigator's Report

- 27.1 Within ten working days from the date of the Pre-Hearing discussion, the Hearings Sub-Committee will meet to consider the allegations. The agenda for the meeting will normally be despatched at least seven clear working days before the date of the meeting. The Monitoring Officer may disclose a copy of the Investigator's report to the complainant prior to the despatch of the Standards Sub-Committee agenda (but may remove any confidential information from the documents). The proceedings will be taped by the Democratic Services Officer and access will be controlled by the Monitoring Officer and usually only permitted when necessary if an appeal is made.
- 27.2 The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Sub-Committee another person. **Note:** the member must meet the cost of such representation.
- 27.3 The Sub-Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Sub-Committee will be shared with the member and the Investigator if they are present. The Sub-Committee may adjourn to hear legal advice but this advice will then be repeated by the legal advisor in the public forum.
- 27.4 At the Hearings Sub-Committee, it will not normally be permitted to raise new disagreements over findings of fact in the final report unless there are good reasons for doing so (for example, new evidence becoming available). It is therefore important that the member complained against raised any issues of concern on the forms sent to the member by the Democratic Services Officer before the hearing.

28. Preliminary Procedural Issues

- 28.1 Before the Sub-Committee considers the Investigator's report it will consider any procedural issues, including requests for paperwork to be withheld from the public and/or for any part of the meeting to be held in private. The Sub-Committee will then resolve any other issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.
- 28.2 The Sub-Committee may adjourn at any time to require further information or investigation to be carried out (in accordance with the Regulations).

29. Making Findings of Fact (Stage 1)

- 29.1 After dealing with any preliminary issues, the Sub-Committee will then move to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
- 29.2 If there is no disagreement about the facts, the Sub-Committee will move on to the next stage of the hearing.
- 29.3 If there is a disagreement, the Investigator, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Sub-Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Sub-Committee may give the member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
- 29.4 The member will then have an opportunity to make representations to support his or her version of the facts and, with the Sub-Committee's permission, call any necessary witnesses to give evidence.
- 29.5 At any time, the Sub-Committee may question any of the people involved or any of the witnesses and may allow the Investigator to challenge any evidence put forward by witnesses called by the member.
- 29.6 If the member disagrees with most of the facts, it may make sense for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
- 29.7 If the member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement during the Pre-Hearing process, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Sub-Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the Sub-Committee will then:
- (a) continue with the hearing, relying on the information in the Investigator's report;
 - (b) allow the member to make representations about the issue, and invite the Investigator to respond and call any witnesses as necessary; or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.

- 29.8 The Sub-Committee will normally move to another room to consider the representations and evidence in private unless there are no significant disagreements about the facts contained in the Investigator's report.
- 29.9 If the Sub-Committee have withdrawn they will then return. The Chairman then will announce the Sub-Committee's findings of fact.
- 30. Did the Member Fail to Follow the Code of Conduct for Members (or Local Protocol)? (Stage 2)**
- 30.1 The Sub-Committee will then consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct (or local protocol).
- 30.2 The member will be invited to give relevant reasons why the Sub-Committee should not decide that he or she has failed to follow the Code.
- 30.3 The Sub-Committee will then consider any verbal or written representations from the Investigator.
- 30.4 The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.
- 30.5 The member will be invited to make any final relevant points.
- 30.6 The Sub-Committee will then move to another room to consider the representations.
- 30.7 If the Sub-Committee have withdrawn they will then return. The Chairman will announce the Sub-Committee's decision as to whether or not the member has failed to follow the Code of Conduct (or local protocol).
- 31. If the Member has not Failed to Follow the Code of Conduct for Members (or Local Protocol)**
- 31.1 If the Sub-Committee decides that the member has not failed to follow the Code of Conduct (or local protocol), the Sub-Committee will move on to consider whether it should make any recommendations to the authority.
- 32. If the Member has Failed to Follow the Code of Conduct (or Local Protocol) (Stage 3)**
- 32.1 If the Sub-Committee decides that the member has failed to follow the Code of Conduct (or local protocol), it will consider any verbal or written representations from the Investigator and the member (in that order) as to:
- (a) whether or not the Sub-Committee should set a sanction; and
 - (b) what form any sanction should take in accordance with the statutory powers available to the Sub-Committee.
- 32.2 When deciding on a sanction, the Standards Sub-Committee will make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what sanction to set the Sub-Committee will consider the criteria on sanctions approved by the Standards

Committee and included in the papers sent to the parties.

- 32.3 The Sub-Committee will move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be. On their return, the Chairman will then announce the Sub-Committee's decision.

33. Recommendations to the Council

- 33.1 After considering any verbal or written representations from the Investigator, the Sub-Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

34. The Written Decision

- 34.1 The Sub-Committee will announce its decision on the day and provide a short written decision on that day. A full written decision prepared by the Democratic Services Officer and approved by the Monitoring Officer and Chairman of the Hearings Sub-Committee will be published within ten working days.

- 34.2 Following the closure of the hearing, the Democratic Services Officer will prepare a formal written notice of the Sub-Committee's determination for approval by the Monitoring Officer and Chairman and will arrange for the distribution and publication of that notice within five days (in accordance with the Regulations).

- 34.3 The notice comprises a formal written notice which must:

- (a) State that the Sub-Committee has found either:
 - (i) That the member had not failed to comply with the Code of Conduct or local protocol; or
 - (ii) That the member had failed to comply with the Code of Conduct or local protocol but that no action needs to be taken in respect of the failure; or
 - (iii) That the member had failed to comply with the Code of Conduct or local protocol and the sanction imposed.
- (b) Specify the details of any such failure.
- (c) Give reasons for the Sub-Committee reaching that finding.
- (d) Specify any sanction which the Sub-Committee has imposed on the member.
- (e) State that the member may apply for permission to appeal against the finding (where the Sub-Committee has found that there had been a failure to comply with the Code of Conduct or local protocol) and provide the address to write to and relevant time limit.

- 34.4 The formal written notice must be sent to:

- (a) The member concerned.

- (b) The Investigator concerned.
- (c) The Standards Committee (as the determination was made by a Sub-Committee).
- (d) The Standards Committee of any other authority of which the member is also a member.
- (e) Any Parish Council of which the member is a member.
- (f) The complainant.
- (g) One or more newspapers circulating in the area of the authority (unless the Sub-Committee finds that there has not been a breach and the member requests that the notice is not sent to the press).

35. Failure to Comply with the Requirements of this Protocol

Failure by a member to comply with the reasonable requirements of the Investigator, or this protocol, may result in a further complaint being made to the Monitoring Officer and may be referred to the Standards Committee. This will be a breach of paragraph 20 of the Code of Conduct for Members. Officers are also required to comply with the reasonable requirements of the Investigator and this Protocol. Any failure to do so may result in disciplinary action being taken against the individual concerned.

36. Modification of Procedure

The Monitoring Officer, in agreement with the Chairman of the Standards Committee/Sub-Committee and with the agreement of the person accused of the breach, may vary this Protocol in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness; such variation to be recorded in writing signed by the Chairman with reasons given for the variation, and filed on the case file.