



## **LOCAL PROTOCOL**

on

## **LOCAL INVESTIGATION AND DETERMINATION OF ALLEGATIONS OF MISCONDUCT BY MEMBERS**

**Town Hall  
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## 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 the Council and all non-elected 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 Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean the Monitoring Officer or other investigating officer, and his/her nominated representative.
- 1.3 'The Committee' refers to the Standards Committee which will consider findings of 'no breach'. 'The Sub-Committee' refers to the Standards Sub-Committee to which the Standards Committee has delegated powers to conduct a hearing.
- 1.4 '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.
- 1.5 '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.
- 1.6 'The Chairman' refers to the person presiding at the Committee/Sub-Committee.

## 2. INTRODUCTION AND SUMMARY

- 2.1 This purpose of this Protocol is to provide clarity in the way in which the Council will deal with local investigation and determination of allegations of misconduct by members.
- 2.2 This Protocol is based on the model local investigation and hearings procedures developed by Peter Keith-Lucas and has been updated by Torbay Council ("the Council") in the light of the experience of local investigations and hearings and the Standards Board for England's guidance. It should be read in conjunction with the "Local Investigations – Guidance for Monitoring Officers and Standards Committees," the "How to conduct an investigation – advice for local authorities investigating allegations of misconduct" and the "Standards Committee Determinations – Guidance for Monitoring Officers and Standards Committees" leaflets published by the Standards Board for England.
- 2.3 Where the Standards Board for England ("The Board") receives an allegation that a Member has breached the Council's Code of Conduct for Members, The Board refers the allegation to an Ethical Standards Officer for investigation. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the Council'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 investigate the allegation (or arrange for an Investigator to do so) and to report the matter to the authority's Standards Committee/Sub-Committee, which will then determine whether a breach of the Council's Code of Conduct for

Members has occurred.

- 2.4 The Council has adopted a number of local protocols which do not form part of the Code of Conduct for Members. Allegations of breach of a local protocol are not within the jurisdiction of the Standards Board for England but fall to be investigated and determined by the authority concerned. Accordingly this Protocol will apply equally to allegations of breach of a local protocol.
- 2.5 In this process, 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, rather than an adversarial 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.

### **3. MODIFICATION OF PROCEDURE**

- 3.1 The Monitoring Officer, in consultation with the Chairman of the Standards Committee and with the agreement of the person accused of the breach, may agree to 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. All parties will be required to provide written confirmation of acceptance of the variation, this may be done via email.

### **4. APPOINTMENT OF INVESTIGATOR**

- 4.1 Normally within three working days of receipt of an allegation from an Ethical Standards Officer or an allegation of a breach of a local protocol (which he/she considers requires further investigation), the Monitoring Officer will decide either to:
- a) investigate the matter personally; or
  - b) (following consultation with the Chief Executive) appoint an Investigator and instruct him/her to conduct an investigation of the allegation and to report their findings to the Standards Committee (in the case of no breach) or the Standards Sub-Committee (where the Investigator determines that there has been a breach).
- 4.2 The Investigator may be an officer of the authority, an officer of another local authority, or an external Investigator. References to the Monitoring Officer in the remainder of this document include reference to the Investigator (and vice-versa as the context requires).
- 4.3 The Investigator may appoint persons to assist him/her in the conduct of his/her functions.
- 4.4 Normally a local investigation will be completed (i.e. a final report produced) within eight weeks from the date the Monitoring Officer receives the referral from the Standards Board for England or allegation of a breach of a local protocol. An indicative timetable

for local investigation is set out at Appendix 3 to this Protocol. 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.

- 4.5 Where the Ethical Standards Officer has completed an investigation and produced a final report, which has been referred to the Monitoring Officer for determination by the Council's Standards Committee/Sub-Committee, paragraphs 4.1 to 4.4 and 5 to 17 of this Protocol will not apply.

## **5. NOTIFICATION TO THE MEMBER COMPLAINED AGAINST OF LOCAL INVESTIGATION**

- 5.1 Within the three working days referred to in paragraph 4.1 above, the Monitoring Officer will (unless otherwise directed by the Ethical Standards Officer) notify in writing the member against whom the allegation is made:

- (a) That he/she has received an allegation for investigation.
- (b) Of the name and address of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk).
- (c) Of the conduct which is the subject of the allegation.
- (d) Of the section(s) of the Code of Conduct for Members (or local protocol) which are alleged to have been breached by the member.
- (e) Of the procedure which will be followed in respect of the allegation.
- (f) Of the identity of the Investigator.

and will provide any evidence supplied by the person making the allegation.

## **6. NOTIFICATION TO THE PERSON WHO MADE THE COMPLAINT OF LOCAL INVESTIGATION**

- 6.1 The Monitoring Officer will then (unless otherwise directed by the Ethical Standards Officer) notify in writing the person who made the complaint:

- (a) That he/she has received the allegation for investigation.
- (b) Of the conduct which is the subject of the allegation.
- (c) Of the section(s) of the Code of Conduct for Members (or local protocol) which are alleged to have been breached by the member.
- (d) Of the procedure which will be followed in respect of the allegation.
- (e) Of the identity of the Investigator.

and list all the evidence (if any) supplied by the person making the allegation (so that the person making the allegation may be satisfied that all the information they have previously provided to the Standards Board for England (or Ethical Standards Officer) has been received by the Monitoring Officer and will be considered as part of the investigation.

## **7. NOTIFICATION TO MEMBERS OF THE STANDARDS COMMITTEE OF LOCAL INVESTIGATION**

- 7.1 At the same time as notifying the member, the Monitoring Officer will notify the members of the Standards Committee in writing by means of confidential letter that an investigation is being carried out and the name of the Investigator. The letter will not name the complainant or the member against whom the allegation has been made and will not be considered at any Standards Committee/Sub-Committee meeting.

## **8. INITIAL RESPONSE OF THE MEMBER TO ALLEGATION(S)**

- 8.1 In notifying the member against whom the allegation has been made of receipt of the allegation, the Monitoring Officer will request the member to respond to the Investigator, in writing within, five working days of receipt of the Monitoring Officer's letter as follows:
- (a) Advising the Investigator whether the member admits or denies the breach of the Code of Conduct (or local protocol) which is the subject of the allegation.
  - (b) Listing any documents that the member wishes the Investigator to take into account in any investigation of the allegation (and, where possible, providing copies of these documents) and informing the Investigator of where the original documents may be inspected.
  - (c) Providing the Investigator with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the member wishes the Investigator to interview in the course of any investigation of the allegation, and any information which the member wishes the Investigator to seek from that person or organisation.

## **9. PURPOSE OF THE INVESTIGATION**

- 9.1 The purpose of the investigation is to enable the Investigator to prepare and present to the Standards Committee/Sub-Committee a report which, together with any report provided by the Ethical Standards Officer;
- (a) will provide the Standards Committee/Sub-Committee with sufficient information to determine whether the member has acted in breach of the Code of Conduct (or local protocol); and
  - (b) where there has been a breach of the Code of Conduct (or local protocol), will enable the Standards Committee/Sub-Committee to determine what action, if any, should be taken in respect of the member or in consequence of the breach.

## **10. TERMINATION OF THE INVESTIGATION**

- 10.1 The scope of the investigation will be proportionate to the seriousness and complexity of the allegations of the complaint. The Investigator 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/Sub-Committee and to enable the Committee/Sub-Committee to come to a considered decision on the matters set out in paragraph 9.1 above.

## **11. ADDITIONAL MATTERS**

11.1 Where, in the course of his/her investigation, the Investigator 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 member other than the breach which he/she is currently investigating, the Investigator will either:

- (a) Where the additional matter relates to an apparent breach of any of the authority's local protocols, notify the member concerned in writing of the other matter, providing details in the form set out in paragraphs 5(c) and (d) above and seek the consent of the member, in writing within five working days of receipt of the Investigator's letter, to the other matter being investigated and dealt with by the Investigator and the Standards Committee/Sub-Committee as if it were part of the original allegation; or
- (b) Where the member has refused consent as set out in paragraph 11.1(a) above or failed to provide such consent within five working days of being so notified, or where the Investigator is of the opinion that the other matter should be dealt with separately from the original allegation, the Investigator will provide details of the suspected further breach to the Monitoring Officer who will then arrange for the separate investigation of that additional allegation and report to the Standards Committee/Sub-Committee or the Standards Board for England as appropriate; or
- (c) Where the additional matter relates to an apparent breach of the Code of Conduct, the Investigator will ask the person from whom they obtained the information to make an allegation to the Standards Board for England. If they do not wish to make an allegation the Investigator will advise the Monitoring Officer, who will be able to make an allegation to the Standards Board for England. Neither the Monitoring Officer nor the Investigator have any lawful authority to investigate any additional matter that may constitute a breach of the Code of Conduct for Members unless such additional investigation is also referred to the Monitoring Officer by an Ethical Standards Officer.

11.2 Normally within five working days of the notification to the member, the Investigator will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents or other things to be inspected as part of the investigation. Where the member has provided the Investigator with the information requested in accordance with paragraph 8.1 above, the Investigator will 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 is intended to delay the completion of the investigation rather than to contribute to the accuracy of the Investigator's final report. The Investigator may supplement or amend this list at any stage of the investigation.

## **12. CONFIDENTIALITY**

12.1 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.

- 12.2 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.

### **13. PRODUCTION OF DOCUMENTS, INFORMATION AND EXPLANATIONS**

- 13.1 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.

### **14. INTERVIEWS**

#### **14.1 Timescale**

The Investigator will normally make arrangements for interviews 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 is reasonably practicable.

#### **14.2 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.

#### **14.3 Representation**

Any person who appears before the Investigator may arrange to be accompanied (at their own expense) by a solicitor or friend.

#### **14.4 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.

### **15. COSTS**

- 15.1 The Investigator may (with prior authorisation from the Monitoring Officer) 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.

**16. REFER BACK TO THE STANDARDS BOARD FOR ENGLAND**

- 16.1 At any point in the course of the investigation, if the Investigator is of the opinion that the seriousness of the matter(s) which he/she is investigating (including any additional matters identified under paragraph 11.1(c) above) is such that they may merit the application of a sanction beyond the powers of the Standards Sub-Committee, he/she may (after consulting the Monitoring Officer, if separate) suspend his/her investigation and refer the matter, together with any supporting information, to the Standards Board for England for an Ethical Standards Officer to consider. The Investigator will then report the fact of this reference to the next convenient meeting of the Standards Committee.
- 16.2 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 cease his/her investigation; or
  - (b) direct that the Monitoring Officer concerned continue his/her investigation in accordance with the Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, 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.

**17. INVESTIGATOR'S REPORT**

- 17.1 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. 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.
- 17.2 If the Investigator becomes aware that they are unlikely to comply with the indicative timescale for producing a final report (to a material degree) they will inform the Monitoring Officer, complainant and person complained against as soon as reasonably practicable, in writing (including by email).
- 17.3 If the Investigator considers that it is appropriate to produce a draft report, this will normally be done within 20 working days of receipt of the information from the member complained against, requested in paragraph 8, when they are satisfied that they have sufficient information to meet the requirement set out in paragraph 9.1 (or they consider that they have obtained as much information as is likely to be reasonably capable of being obtained) they will conclude the production of their draft/final report as soon as reasonably practicable. The Investigator's report will normally include:
- (a) A "confidential" marking (draft report only).
  - (b) A "draft" or "final" marking.
  - (c) The date.
  - (d) The legislation under which the investigation is being carried out.

- (e) A summary of the allegation.
  - (f) The relevant sections of the Code of Conduct (or local protocol).
  - (g) The member's initial response to notification of the allegation (if any).
  - (h) The evidence, including relevant information and explanations which he/she has obtained in the course of the investigation.
  - (i) A statement of his/her findings/draft findings of fact.
  - (j) His/her reasoning.
  - (k) His/her finding as to whether there has been a failure to comply with the Code of Conduct (or local protocol) in the matter set out in the allegation or in respect of any other matter which he/she has determined to investigate as if it were part of the original allegation.
  - (l) A list of any documents relevant to the matter (and copies of any documents not generally available or published).
  - (m) A list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information and (final reports only) copies of interview records.
  - (n) 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.
- 17.4 Paragraphs 17.5 to 17.8 (inclusive) only apply where the Investigator decides to produce a draft report.
- 17.5 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.
- 17.6 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.
- 17.7 Normally 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 which will include those matters set out in paragraph 17.3 above together with:
- (a) A statement that the report represents his/her final findings and will be presented to the Council's Standards Committee/Sub-Committee (as appropriate).
  - (b) Any issues arising out of the investigation which he/she may wish to draw to the attention of the Standards Committee/Sub-Committee. (For example, the need to

review or reconsider any decision which was the subject of the breach of the Code of Conduct (or local protocol); to rectify any deficiency in the Council's decision-making procedures; or to prevent or deter any future breach of the Code of Conduct (or local protocol.)

- 17.8 The Investigator will write to (or email) all persons to whom a copy of his/her draft report was sent. This communication will confirm whether the Investigator has received any responses from the person in question and (if a response has been received) whether those comments have been reflected in the final report. If comments received are not reflected in the final report the Investigator will normally give brief reasons why those comments have not been incorporated into the final report.
- 17.9 The Investigator may (at his/her reasonable discretion) delete or obscure any parts of any interview notes or other documents that have not been relied upon in the preparation of his/her report.

## **18. PRESUMPTION OF STANDARDS COMMITTEE MEETINGS AND SUB-COMMITTEE HEARINGS IN PUBLIC**

- 18.1 The Standards Committee (England) Regulations 2008 allow for the investigation report to be considered as exempt information. The Regulations 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 had 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.
- 18.2 If a decision is made by the Referrals Sub-Committee that the investigation report should be referred to the HearingsA complaint will be determined at a meeting of the Standards Committee, or following a hearing before the Standards Sub-Committee. Therefore, the rules covering the exclusion of the press and the public are those set out in the Local Government Act 1972 (as amended) – Access to Information provisions. (These are set out in Appendix 2.) If the press and the public are to be excluded from a Committee or Sub-Committee a formal resolution of the meeting is required. This must specify the legal grounds for exclusion.
- 18.3 The Standards Board for England's advice regarding paperwork is also clear. Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However, the Chief Executive has the power to prevent any part of a report being made public if it relates to part of the meeting which, in his or her opinion, is likely to be held in private. The Standards Board for England recommends that this power should be exercised where one of the people involved has requested that a document be kept confidential.

## **19. EXCLUSION OF COUNCILLORS FROM COMMITTEE MEETINGS AND HEARINGS**

- 19.1 The Code of Conduct for Members establishes the rules on members' interests. Personal interests are declarable, but are no bar to participation at Committee meetings (or Sub Committee hearings) unless the interest also amounts to a 'personal prejudicial interest'. 'Personal prejudicial interests' preclude a member from sitting on a Committee

(or Sub-committee) and even prevent a member from ‘sitting in the gallery’ to observe and listen to a meeting or hearing.

- 19.2 Members may be precluded from attending a committee/hearing if they are a friend of the person against whom the complaint has been brought. This is because ‘friendship’ will establish a personal interest in the matter. This will amount to a personal and prejudicial interest if a reasonable person, with knowledge of the relevant facts, would reasonably regard the friendship as so significant that it is likely to prejudice the member’s judgement of the public interest.
- 19.3 The Common Law rules on ‘apparent bias’ are separate from the Code of Conduct and preclude both ‘friends’ and ‘enemies’ from sitting on a Committee (or Sub-Committee) but do not require exclusion from ‘the gallery’.
- 19.4 The net effect of these rules is that close friends of a member against whom a complaint is made may not attend a Committee meeting (or Sub-Committee hearing) (they will have personal and prejudicial interests) but any ‘enemies’ may watch from the gallery (they do not have an ‘interest’) and are merely precluded from sitting on the Committee/Sub-Committee itself because of ‘apparent bias’.
- 19.5 A member who is the subject of an allegation may attend a meeting of the Standards Committee (or Sub-Committee hearing) even though they have a personal prejudicial interest in the matter. This is because excluding them from the meeting/hearing would contravene their human rights (an accused person must be entitled to attend their own “trial”). However, obviously they must not serve on the Committee (or Sub-Committee) and they must declare their interest.
- 19.6 Whilst a member accused of breaching the Code of Conduct (or local protocol) must not seek “improperly” to influence the outcome of the meeting/hearing, this does NOT preclude them from legitimately defending themselves against the allegations made at a Sub-Committee hearing. (However, it should be noted that a member complained against has no right to address a Standards Committee where the Investigator has concluded that there has been no breach.)

## **20. FINDING OF NO BREACH – STANDARDS COMMITTEE**

- 20.1 If the Investigator finds that there has been no breach of the Code of Conduct or local protocol the report will be sent to the Standards Committee for consideration. The process set out in paragraph 21 of this Protocol will be followed.

## **21. NOTIFICATION OF RECEIPT OF INVESTIGATOR’S REPORT TO THE MEMBER COMPLAINED AGAINST (FINDING OF NO BREACH)**

- 21.1 Normally, within three working days of the final report being sent to the member complained against the Democratic Services Officer will arrange for a provisional date for the Standards Committee to meet. The Democratic Services Officer will contact the relevant number of members to serve on the Committee (ensuring that none of them has a personal prejudicial interest in the matter or are otherwise precluded from participating (for example because of “apparent bias”)).
- 21.2 In accordance with The Local Authorities (Code of Conduct) (Local Determination) (Amendment) 2004 Regulations the Standards Committee meeting (or Standards Sub-

Committee hearing) must be held within three months of:

- (a) The Monitoring Officer receiving a report from the ESO; or
- (b) The Investigator completing their final report

21.3 The Standards Committee/Sub-Committee meeting must not be held until at least 14 days after the member has received the ESO/Investigator’s final report (unless the member agrees to a shorter timescale and confirms that agreement in writing or by email). This timescale shall also apply in relation any allegation of breach of a local protocol. An indicative timetable for the determination of a finding of no breach is set out at Appendix 4 to this Protocol.

21.4 Normally, within three working days from receipt of the Investigator’s final report the Monitoring Officer will write to the person accused advising them that:

- (a) He/she has received the Investigator’s final report with a finding of no breach.
- (b) This report will be considered at a meeting of the Standards Committee.
- (c) The provisional date of the Committee.
- (d) They should return Forms A to D within five working days of receipt of the Monitoring Officer’s letter.

The purpose of the member completing Forms A to D at this stage is to establish whether or not they will be attending the meeting of the Standards Committee and to determine whether or not they wish any of the paperwork to be withheld from the public and/or any part of the meeting to be held in private. The forms will be kept confidential at this stage and held by the Monitoring Officer. If the Standards Committee refers the matter to the Standards Sub-Committee for a formal hearing, the forms will be used to expedite the process set out in paragraphs 24 to 38 of this Protocol. Enclosed with the letter will be the following attachments:

- (a) A copy of the Investigator’s report.
- (b) Form A – Member’s response form.
- (c) Form B – Other evidence to be presented at the hearing.
- (d) Form C – Arrangements for the Standards Committee/Sub-Committee hearing.
- (e) Form D – Details of proposed witnesses.
- (f) The Local Protocol on Local Investigation and Determination of Allegations of Misconduct by Members (if not already provided).

21.5 Normally, within five working days of receipt of the Monitoring Officer’s letter the member will send the Monitoring Officer completed Forms A to D and will confirm whether or not they will attend the Committee meeting and whether they wish any paperwork to be

withheld from the public and/or any part of the meeting to be held in private.

- 21.6 Normally, within ten working days from the date the Monitoring Officer receives the completed forms, the Standards Committee will meet to consider the Investigator's report. The agenda for the Committee will normally be despatched at least five 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 Committee agenda (but may ensure that any confidential information is removed from the documents).
- 21.7 Before the Standards Committee considers the Investigator's report it will consider any requests for the paperwork to be withheld from the public and/or for any part of the meeting to be held in private.
- 21.8 The Standards Committee will then consider the Investigator's report and will make one of the following findings (in accordance with The Local Authorities (Code of Conduct) (Local Determination) 2004 Regulations "The 2004 Regulations"):-
- (a) that it accepts the Investigator's findings of no failure (a finding of acceptance); or
  - (b) that the matter should be considered at a hearing of the Standards Sub-Committee. The process set out in paragraphs 24 to 38 of this Protocol will then be followed.
- 21.9 The Committee may adjourn to consider its decision (and, if it adjourns, will then return to the meeting) and will announce its decision.
- 21.10 A waiting room will normally be made available to the member complained against which may be used when the Committee adjourns to consider its decision.
- 21.11 The Committee may adjourn at any time to require further information or further investigation to be carried out (in accordance with the 2004 Regulations). The Committee may also decide to defer consideration of any recommendations (whether made by the Investigator or arising from their own deliberations) to a subsequent or adjourned meeting.
- 21.12 As soon as reasonably practicable after the Standards Committee has made a finding of acceptance, the Standards Committee will:
- (a) give written notice of that finding to:
    - (i) the member who is the subject of the finding of no failure;
    - (ii) the Investigator (if separate from the Ethical Standards Officer);
    - (iii) the Ethical Standards Officer (ESO) concerned (a copy of the Investigator's report (if separate from the ESO) to be sent to the ESO at the same time as the decision); and
    - (iv) any person who made an allegation that gave rise to the investigation; and
  - (b) arrange for a notice to be published in at least one newspaper circulating in the



Borough of Torbay (unless the member 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 comply with the Code of Conduct for Members (and/or local protocol(s)).

## **22. FINDING OF BREACH – STANDARDS SUB-COMMITTEE**

- 22.1 If the Investigator finds that there has been a breach of the Code of Conduct (or local protocol) the report will be referred to the Standards Sub-Committee for consideration. The process set out in paragraphs 23 to 38 of this Protocol will be followed.

## **23. NOTIFICATION OF RECEIPT OF INVESTIGATOR'S REPORT TO THE MEMBER COMPLAINED AGAINST (FINDING OF BREACH)**

- 23.1 Normally, within three working days of the final report being sent to the member complained against the Democratic Services Officer will arrange for a provisional date for the Standards Sub-Committee to meet. The Democratic Services Officer will contact the relevant number of members to serve on the Sub-Committee (ensuring that none of them has a personal prejudicial interest in the matter or are otherwise precluded from participating (for example, because of "apparent bias").
- 23.2 In accordance with The Local Authorities (Code of Conduct) (Local Determination) (Amendment) 2004 Regulations the Sub-Committee must be held within three months of:
- (a) The Monitoring Officer receiving a report from the ESO; or
  - (b) The Investigator completing their final report.
- 23.3 The Standards Sub-Committee meeting must not be held until at least 14 days after the member has received the ESO/Investigator's final report (unless the member agrees to a shorter timescale and confirms that agreement in writing or by email). This timescale shall also apply in relation any allegation of breach of a local protocol. An indicative timetable for the determination of a finding of a breach is set out at Appendix 5 to this Protocol.
- 23.4 Normally, within three working days of receipt of the Investigator's final report the Monitoring Officer will write to the person accused advising them that:
- (a) He/she has received the Investigator's final report with a finding that they have breached the Council's Code of Conduct for Members (or local protocol).
  - (b) This report will be considered at a meeting of the Standards Sub-Committee.
  - (c) Of the provisional date for the Sub-Committee.
  - (d) Forms A to D should be returned within five working days of receipt of the Monitoring Officer's letter.

Enclosed with the letter will be the following attachments:-

- (i) A copy of the Investigator's report.
- (ii) Form A – Member's response form.
- (iii) Form B – Other evidence to be presented at the hearing.
- (iv) Form C – Arrangements for the Standards Committee/Sub-Committee hearing.
- (v) Form D – Details of proposed witnesses.
- (vi) The Local Protocol on Local Investigation and Determination of Allegations of Misconduct by Members (if not already provided).

**24. NOTIFICATION OF MEMBERS' RESPONSE TO FORMS A TO D**

24.1 Normally, within three working days of receipt of the completed Forms A to D the Monitoring Officer will write to the investigator enclosing a copy of the completed Forms A to D requesting that they advise him/her of the following (within five working days of receipt of their letter):

- (a) Does he/she have any comments he/she wishes to make in respect of the completed Forms A to D?
- (b) Would he/she be available to attend the Standards Sub-Committee hearing on this matter?
- (c) Does he/she want to call any relevant witnesses to give evidence to the Standards Sub-Committee at the hearing?
- (d) Does he/she want any part of the hearing to be held in private? If so, the reasons for this request?
- (e) Does he/she want any part of his/her report or any other relevant documents to be withheld from the press and public? If so, the reasons for this request?

**25. PRE-HEARING MEETING**

25.1 Normally, within three working days of receipt of the response from the Investigator by the Monitoring Officer a Pre-Hearing Meeting will be held. All members of the Standards Sub-Committee will be invited to attend the Pre-Hearing meeting. The quorum for this meeting will be two members of the Sub-Committee (including at least one independent member). The Monitoring Officer (or other legal advisor to the Sub-Committee if the Monitoring Officer is the Investigator) and Democratic Services Officer will also be in attendance. The Member complained against, the complainant and the Investigator shall not be entitled to attend the Pre-Hearing Meeting.

25.2 The Pre-Hearing Meeting will only deal with procedural issues.

25.3 Those present at the Pre-Hearing Meeting will receive a copy of the completed Forms A to D. The Pre-Hearing Meeting (if quorate) will consider:

- (a) Whether the member who the allegation has been made about disagrees with any

findings of fact in the final report and, if so, whether those disagreements are significant to the hearing.

- (b) Whether to hear evidence about those disagreements during the hearing.
  - (c) Whether or not there are any parts of the hearing that should be held in private.
  - (d) Whether there are any parts of the final report or other documents that should be withheld from the press and public.
  - (e) The witnesses who need to be invited to attend the hearing.
  - (f) Whether it is appropriate for the complainant to attend the hearing and give evidence.
  - (g) Whether any other persons should be invited to make representations.
  - (h) The critical issues of the case for determining at the hearing.
  - (i) Any other procedural matters that the Pre-Hearing Meeting consider appropriate.
- 25.4 At the Standards Sub-Committee hearing members 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 Forms A to D.

## **26. PRE-HEARING PROCESS SUMMARY**

- 26.1 Once the Pre-Hearing meeting 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 name of the authority.
  - (b) The name of the member who the allegation has been made about.
  - (c) The name of the person who made the original allegation (unless there are good reasons to keep his or her identity confidential).
  - (d) Case reference numbers of the authority and the Standards Board for England.
  - (e) The name of the Standards Sub-Committee member who will chair the hearing.
  - (f) The name of the Monitoring Officer.
  - (g) The name of the Investigator.
  - (h) The name of the clerk of the hearing or other administrative officer.
  - (i) The date the pre-hearing process summary was produced.

- (j) The date, time and place of the hearing.
- (k) A summary of the allegation.
- (l) The relevant section or sections of the Code of Conduct or local protocol.
- (m) The findings of fact in the investigator's report that are agreed.
- (n) The findings of fact in the investigator's report that are not agreed.
- (o) Whether or not the member or the investigator will attend or be represented.
- (p) The names of any witnesses who will be asked to give evidence.
- (q) An outline of the proposed procedure for the hearing.
- (r) 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 Standards Sub-Committee within three working days after the date of conclusion of the Pre-Hearing Meeting.

## **27. CONSIDERATION OF INVESTIGATOR'S REPORT**

27.1 Normally, within ten working days from the date of the Pre-Hearing meeting the Standards Sub-Committee will meet to consider the allegations. The Democratic Services Officer will confirm the date, time and location of the Sub-Committee and will write to the person accused, the members of the Sub-Committee, the complainant, the Monitoring Officer and the investigator. The agenda for the meeting will normally be despatched at least five clear working dates 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).

27.2 A waiting room will normally be made available to the member complained against which may be used when the Sub-Committee adjourns to consider its decision.

## **28. REPRESENTATION**

28.1 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.

## **29. LEGAL ADVICE**

29.1 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.

**30. SETTING THE SCENE**

- 30.1 After all the members and everyone involved have been formally introduced, the Chairman will explain how the Sub-Committee is going to run the hearing.

**31. PRELIMINARY PROCEDURAL ISSUES**

- 31.1 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.
- 31.2 The Sub-Committee may adjourn at any time to require further information or investigation to be carried out (in accordance with The 2004 Regulations).

**32. MAKING FINDINGS OF FACT**

- 32.1 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.
- 32.2 If there is no disagreement about the facts, the Sub-Committee will move on to the next stage of the hearing.
- 32.3 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.
- 32.4 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.
- 32.5 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.
- 32.6 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.
- 32.7 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.
- 32.8 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.
- 32.9 If the Sub-Committee have withdrawn they will then return. The Chairman then will announce the Sub-Committee's findings of fact.

**33. DID THE MEMBER FAIL TO FOLLOW THE CODE OF CONDUCT FOR MEMBERS (OR LOCAL PROTOCOL)?**

- 33.1 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).
- 33.2 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.
- 33.3 The Sub-Committee will then consider any verbal or written representations from the Investigator.
- 33.4 The Sub-Committee may, at any time, question anyone involved on any point they raise in their representations.
- 33.5 The member will be invited to make any final relevant points.
- 33.6 Normally, the Sub-Committee will then move to another room to consider the representations.
- 33.7 If the Sub-Committee have withdrawn they will then return. The Chairman then 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).

**34. IF THE MEMBER HAS NOT FAILED TO FOLLOW THE CODE OF CONDUCT FOR MEMBERS (OR LOCAL PROTOCOL)**

- 34.1 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.

**35. IF THE MEMBER HAS FAILED TO FOLLOW THE CODE OF CONDUCT (OR LOCAL PROTOCOL)**

- 35.1 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 penalty; and

- (b) what form any penalty should take.

The Investigator and the member complained against may make reference to relevant case laws and/or determinations of the Adjudication Panel in their representations.

35.2 When deciding on a penalty, the Standards Sub-Committee will make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what penalty to set the Sub-Committee will normally consider the following questions (recommended by the Standards Board for England) along with any other relevant matters raised at the hearing:

- (a) What was the member's intention? Did the member know that he/she was failing to follow the Code of Conduct (or local protocol)?
- (b) Did the member get advice from others before the incident? Was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Had there been financial impropriety (for example improper expense claims or procedural irregularities)?
- (e) What was the result of failing to follow the Code of Conduct (or local protocol)?
- (f) How serious was the incident?
- (g) Does the member accept he/she was at fault?
- (h) Did the member apologise to the relevant people?
- (i) Has the member previously been warned or reprimanded for similar misconduct?
- (j) Has the member failed to follow the Code of Conduct (or local protocol) before?
- (k) Is the member likely to do the same thing again?

35.3 The Sub-Committee may impose any of, or a combination of, the following sanctions:

- (i) censure of that member.
- (ii) restriction for a period up to a maximum of three months of that member's access to the premises of the authority and that member's use of the resources of the authority, provided that any such restrictions imposed upon the member:
  - (a) are reasonable and proportionate to the nature of the breach; and
  - (b) do not unduly restrict the member's ability to perform his functions as a member.
- (iii) partial suspension of that member for a period up to a maximum of three months.

- (iv) suspension of that member for a period up to a maximum of three months.
  - (v) a requirement that the member submit a written apology in a form specified by the Standards Sub-Committee.
  - (vi) a requirement that the member undertake training as specified by the Standards Sub-Committee.
  - (vii) a requirement that the member undertake conciliation as specified by the Standards Sub-Committee.
  - (viii) partial suspension of that member for a period up to a maximum of three months or until such time as he/she submits a written apology in a form specified by the Standards Sub-Committee.
  - (ix) partial suspension of that member for a period up to a maximum of three months or until such time as he/she undertakes such training or conciliation as the Standards Sub-Committee may specify.
  - (x) suspension of that member for a period up to a maximum of three months or until such time as he/she submits a written apology in a form specified by the Standards Sub-Committee.
  - (xi) suspension of that member for a period up to a maximum of three months or until such time as he/she undertakes such training or conciliation as the Standards Sub-Committee may specify.
  - (xii) a Standards Sub-Committee may direct that a sanction imposed under paragraphs (ii) to (xi) will commence on any date within a period of six months after the imposition of that sanction, as the Sub-Committee may specify in their direction.
- 35.4 If the complaint relates to a person who is no longer a member of the authority and the Sub-Committee feels that a sanction should be imposed it will censure the person (in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003).
- 35.5 The Sub-Committee may question the Investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 35.6 The Sub-Committee will normally move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.
- 35.7 If the Sub-Committee have withdrawn they will then return. The Chairman will then announce the Sub-Committee's decision.

## **36. RECOMMENDATIONS TO THE COUNCIL**

- 36.1 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.



**37. THE WRITTEN DECISION**

37.1 The Sub-Committee will announce its decision on the day and provide a short written decision on that day. It will also issue a full written decision shortly after the end of the hearing. As a matter of good practice the Democratic Services Officer will normally prepare a full written decision in draft on the day of the hearing, before people’s memories fade.

37.2 Following the closure of the hearing, the Democratic Services Officer will agree a formal written notice of the Sub-Committee’s determination and will arrange for the distribution and publication of that notice (or a summary of that notice, where required) within 10 days (in accordance with Regulation 8 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003).

37.3 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 nature of the sanction that should be 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).

37.4 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.

**38. PRESS SUMMARY**

- 38.1 The press summary is a summary of the findings, which must be published, in one or more local newspaper. In the case where the Sub-Committee finds that there has been no failure to comply with the Code of Conduct or local protocol, the member may request that no press summary be published.

**39. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS PROTOCOL**

- 39.1 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 Standards Board for England, or the Monitoring Officer, or 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.

**40. DIRECTION FROM ETHICAL STANDARDS OFFICER**

- 40.1 Where the Monitoring Officer has been directed by an Ethical Standards Officer to deal with any matter referred to him/her otherwise than by conducting an investigation, the Monitoring Officer shall (in accordance with the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004):

- (a) deal with the matter in accordance with the direction; and
- (b) within three months of receipt of the direction, submit to the Ethical Standards Officer a written report giving details of what action he has taken or is proposing to take to comply with the direction.

- 40.2 If the Ethical Standards Officer (ESO) is not satisfied with the action taken or proposed to be taken he may require the Monitoring Officer to arrange for a statement to be published in at least one newspaper circulating in the area giving details of the direction given by the ESO and the Monitoring Officer's reasons for not fully implementing this.

- 40.3 Details of any directions and action taken by the Monitoring Officer will be reported to the Standards Committee, as soon as reasonably practicable, for information.

## Admission of Press and Public to Standards Committee Meetings and Standards Sub-Committee Hearings

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

- 1 At the hearing, the Committee/Sub-Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the Local Government Act 1972 (as amended)). If the Committee/Sub-Committee considers that ‘confidential information’ is likely to be revealed during the hearing, the Committee/Sub-Committee is required by law to exclude the public. ‘Confidential information’ is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order requires not to be revealed.
- 2 The Committee/Sub-Committee also has the power to exclude the public if it considers that ‘exempt information’ is likely to be revealed during the hearing. The Committee/Sub-Committee must act in accordance with Article 6 of the *European Convention on Human Rights*. This gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee/Sub-Committee also has a duty to act fairly and in line with the rules of natural justice.
- 3 Article 6 says that the public may be excluded from all or part of the hearing if it is in the interest of:
  - (a) Morals;
  - (b) public order;
  - (c) justice;
  - (d) national security in a democratic society; or
  - (e) protecting young people under 18 and the private lives of anyone involved.
- 4 There should be a public hearing unless the Committee/Sub-Committee decides that there is a good reason, which falls within one of the five categories above (3 a to e), for the public to be excluded.
- 5 The Committee/Sub-Committee must also act in accordance with Article 10 of the *European Convention on Human Rights*. This sets out the right for people to ‘receive and impart information and ideas without interference by public authority’. Any restrictions on this right must be ‘prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’.
- 6 Conflicting rights often have to be balanced against each other. The Committee/Sub-Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee/Sub-Committee) may interfere with this right unless it is:

- (a) in line with the law; and
- (b) necessary in a democratic society in the interests of:
  - (i) national security;
  - (ii) public safety;
  - (iii) the economic well-being of the country;
  - (iv) preventing crime or disorder;
  - (v) protecting people’s health and morals (which would include protecting standards of behaviour in public life); or
  - (vi) protecting people’s rights and freedoms.

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

- 7 In relation to people’s rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it must be remembered that any interference with or restriction of those rights must be ‘necessary in a democratic society.’ A measure will be ‘necessary’ if it meets ‘a pressing social need’, and any restriction on people’s rights must be ‘proportionate’.
- 8 The Standards Board for England recommends that a Standards Committee/Sub-Committee moves to a private room when considering its decisions. The Council does not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly. However, any advice received by the Committee/Sub-Committee will normally be repeated or summarised (by the person giving the advice) in public.

**Categories of ‘Exempt Information’  
under Schedule 12A of the Local Government Act 1972  
(as modified by the Local Government (Access to Information)  
(Variation) Order 2006 and The Relevant Authorities (Standards  
Committee) (Amendment) Regulations 2006)**

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the Council proposes:
  - (a) to give, under any enactment, a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
- 7A. Information which is subject to any obligation of confidentiality.
- 7B. Information which relates in any way to matters concerning national security.
- 7C. The deliberations of the Standards Committee or sub-committee of the Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.

**Indicative Timetable for Local Investigation**

Timescale	Action	Date
within 3 working days	Monitoring Officer to appoint investigator and notify complainant, the councillor complained against and members of the Standards Committee of receipt of complaint for local investigation	
within 5 working days	Councillor to respond to questions raised by the Monitoring Officer within 5 working days of receipt of letter	
within 20 working days	(Within 5 working days the investigator to make arrangements for the interviews.)  Investigator to circulate draft report (if appropriate) to complainant and councillor complained against (this allows time for responses to any additional issues that may arise during the investigation)	
within 5 working days	Councillor complained against and complainant to respond to the draft report	
within 5 working days	Investigator to send final report to the Monitoring Officer within 5 working days of receiving responses from the councillor complained against and the complainant	

**Indicative Timetable for Determination of Finding of No Breach**

Timescale	Action	Date
within 3 working days	Democratic Services Officer to arrange provisional date for Standards Committee within 3 working days after completion of the Investigator’s final report	
within 3 working days	Monitoring Officer to write to the councillor complained against enclosing a copy of the final report (requesting that they complete Forms A to D within 5 working days of receipt of letter) and advising them of the provisional date of the Standards Committee	
within 5 working days	Councillor to respond to the Monitoring Officer and confirm their attendance at the Standards Committee	
within 10 working days	The Standards Committee to meet and consider the allegation.	
<p><b>Note:</b> <i>If the Standards Committee refers the matter to the Standards Sub-Committee the following timetable will be used:</i></p>		
within 3 working days	Democratic Services Officer to arrange provisional date for Standards Sub-Committee and Pre-hearing meeting within 3 working days after the completion of the Standards Committee meeting	
within 3 working days	Monitoring Officer to write to the Investigator enclosing completed Forms A to D and advising them of the date of the Standards Sub-Committee asking them to provide information relating to the hearing (5 working days given to respond)	
within 5 working days	Investigator to respond to the Monitoring Officer and confirm their attendance at the Standards Sub-Committee	
within 3 working days	Pre-hearing meeting to take place	
within 10 working days	Standards Sub-Committee meeting to take place	

<p><b>within 3 months</b></p>	<p><b>Standards Committee/Sub-Committee must have considered the allegation within 3 months of the completion of the Investigator’s final report</b></p>	
<p><b>Note:</b> <i>If the investigation is undertaken by an Ethical Standards Officer references to “investigator” will mean “Ethical Standards Officer” and “completion of Investigator’s final report” shall be read as “receipt by the Monitoring Officer of the Ethical Standards Officer’s report. The Monitoring Officer will advise the ESO of this timetable and ask them to respond within the timescales indicated. However, the Council cannot enforce this request.</i></p>		



**Indicative Timetable for Determination of Finding of Breach**

Timescale	Action	Date
within 3 working days	Democratic Services Officer to arrange provisional date for Standards Sub-Committee and Pre-hearing meeting within 3 working days after completion of the Investigator’s final report	
within 3 working days	Monitoring Officer to write to the councillor enclosing a copy of the final report requesting that they complete Forms A to D within 5 working days and advise them of the provisional date of the Standards Sub-Committee	
within 5 working days	Councillor to respond to the Monitoring Officer and confirm their attendance at the Standards Sub-Committee	
within 3 working day	Monitoring Officer to write to the Investigator enclosing completed Forms A to D and advising them of the date of the Standards Sub-Committee asking them to provide information relating to the hearing (5 working days given to respond)	
within 5 working days	Investigator to respond to the Monitoring Officer and confirm their attendance at the Standards Sub-Committee	
within 3 working days	Pre-hearing meeting to take place	
within 10 working days	Standards Sub-Committee meeting to take place	
<b>within 3 months</b>	<b>Standards Sub-Committee must have considered the allegation within 3 months of the completion of the Investigator’s final report</b>	
<p><b>Note:</b> <i>If the investigation is undertaken by an Ethical Standards Officer references to “investigator” will mean “Ethical Standards Officer” and “completion of Investigator’s final report” shall be read as “receipt by the Monitoring Officer of the Ethical Standards Officer’s report. The Monitoring Officer will advise the ESO of this timetable and ask them to respond within the timescales indicated. However, the Council cannot enforce this request.</i></p>		

**FORM A**

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

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

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

Please attach separate sheets if necessary

**FORM B**  
**Other evidence relevant to the allegation**

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

<b>Paragraph number</b>	<b>Details of the evidence</b>

Please attach separate sheets if necessary

**FORM C**

**Arrangements for the Standards Committee/Sub-Committee hearing**

Please tick the relevant boxes

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

5	<p>Does your representative have any connection with the case?</p> <p>If “Yes”, please give details.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Details:</b></p>
6	<p>Are you going to call any witnesses?</p> <p>If “Yes”, please fill in Form D.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	
7	<p>Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed?)</p> <p>If “Yes”, please give details.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Details:</b></p>
8	<p>Do you, your representative or your witnesses have any special needs (for example, is an interpreter needed?)</p> <p>If “Yes”, please give details.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Details:</b></p>
9	<p>Do you want any part of the hearing to be held in private?</p> <p>If “Yes”, please state which part and provide reasons for your request.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Reasons:</b></p>

<p>10</p>	<p>Do you want any part of the documents to be withheld from public inspection?</p> <p>If “Yes”, please state which parts of the documents and provide reasons for your request.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Reasons:</b></p>
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Please attach separate sheets if necessary.

**FORM D**

**Details of proposed witnesses to be called**

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

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

Please attach separate sheets if necessary