

Review of Standards Committee Procedures

Report of the Clerk and Monitoring Officer

For further information about this report please contact Jonathan Eatough, Clerk and Monitoring Officer, on 01952 383200 or Matthew Cumberbatch, Deputy Monitoring Officer, on 01952 383255.

1 Purpose of Report

This report provides the Committee with proposed amendments to a number of procedures in relation to the processing and investigation of complaints that a Member of the Authority has failed to comply with the Code of Conduct.

2 Recommendations

The Committee is asked to:

- a) Approve the Monitoring Officer Protocol and Assessment and Review Criteria (attached as Appendices A and B);
- b) Approve the revised Local Investigation and Local Hearing Procedures (attached as Appendices C and D); and
- c) Agree that the Monitoring Officer has delegated authority to amend the procedures, if he considers it necessary to do so.

3 Background

Recent experience of Telford & Wrekin Council officers' using the procedures, adopted by both its Standards Committee and that of the Fire Authority, has provided the opportunity to review, and make suggestions to improve, those procedures. Proposed amendments to the processes and procedures, setting out the way, in which complaints are received, assessed, investigated and heard, are attached to this report for the Committee to consider.

4 Review of Processes and Procedures

The local system for the assessment of complaints has now been operating since May 2008. The Standards Committee has previously approved procedures to ensure a fair, transparent and consistent way of dealing with complaints.

Having now used the system for two years and, more recently, having experienced a number of investigations, officers from Telford & Wrekin Council have reviewed the current processes and procedures. Some parts of the processes were found to be either repetitive or in need of simplification. Accordingly, the following procedures are attached to this report as appendices with suggestions for amendment.

Monitoring Officer Protocol – Appendix A

This document, which mirrors that already in place for Telford & Wrekin Council, provides instructions to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of an allegation that a Member of the Authority has failed to comply with the Code of Conduct.

Assessment and Review Criteria – Appendix B

This document sets out the criteria, which the Referrals Sub-Committee will apply in conducting the initial assessment of allegations of failure by Members to observe the Code of Conduct.

Local Investigation Procedure – Appendix C

Although this procedure was only recently updated, the Monitoring Officer wishes to keep Members up-to-date with amendments. There is a removal of the need for a 21-day response regarding the allegation from the Member, who is subject to the complaint. This could slow down the investigation process, particularly in smaller cases. There is more reference to the consideration meetings, which is elaborated upon in the hearing procedure. There will be no need for any separate determination procedure between the investigation and hearing stage.

In addition, any references to the Standards Board for England have been amended to 'Standards for England'.

Local Hearing Procedure – Appendix D

There is a removal of the requirement for a 5-day letter from the Corporate Services Manager, instead there is reference to the consideration hearing and acting promptly after that.

In addition, any references to the Standards Board for England have been amended to 'Standards for England'.

Occasionally it may be necessary to depart from the set procedure, as previously agreed by the Committee. There is, therefore, a recommendation to enable the Monitoring Officer to continue to amend the procedures, if it is necessary to do so. The most likely situation, in which this may arise, is if any changes in legislation or guidance take place, which would require such amendments.

5 Financial Implications

There are no financial implications arising from this report.

6 Legal Comment

It is a legal requirement for the Standards Committee to administer a system for the processing of code of conduct complaints. The procedures attached to this report must be compliant with the Local Government Act 2000 (as amended) and all associated legislation. Standards for England guidance must also be considered when preparing the procedures.

7 Equality Impact Assessment

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided that there are no discriminatory practices or differential impacts upon specific groups arising specifically from this report. An Initial Equality Impact Assessment has not, therefore, been completed.

8 Appendices

Appendix A

Monitoring Officer Protocol

Appendix B

Assessment and Review Criteria

Appendix C

Local Investigation Procedure

Appendix D

Local Hearing Procedure

9 Background Papers

There are no background papers associated with this report.

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Business Continuity Planning		Legal	*
Capacity		Member Involvement	*
Civil Contingencies Act		National Framework	
Comprehensive Area Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial		Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	
Integrated Risk Management Planning			

Shropshire and Wrekin Fire and Rescue Authority

Monitoring Officer Protocol relating to Allegations of Breach of Code of Conduct

Instructions to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of an allegation that a Member of the Authority has failed to comply with the Code of Conduct

1 Receipt of Allegations

- 1.1 The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation, made in writing that a Member of the Authority has or may have failed to comply with the Authority's Code of Conduct, is referred to him/her immediately upon receipt by the Authority.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.

2 Notification of Receipt of Allegations

- 2.1 All relevant allegations must be assessed by the Referrals Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Referrals Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority. Upon receipt of a complaint the monitoring Officer may also contact the complainant if the complaint is unclear or ambiguous to discuss with the complainant whether the complaint should proceed.
- 2.2 Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly, and in any case in advance of the relevant meeting:

- 2.2.1 acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Referrals Sub-Committee normally within 20 working days of receipt.;
- 2.2.2 notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed normally within 20 working days of receipt. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she may withhold the identity of the complainant until such time that the Referrals Sub-Committee can consider the complainant's request for their identity to be withheld.;
- 2.2.3 collect such information as is readily available and would assist the Referrals Sub-Committee in its function of assessing the allegation;
- 2.2.4 seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- 2.2.5 place a report, including a copy of the allegation and such readily available information on the agenda for the next convenient meeting of the Referrals Sub-Committee.

3 Local Resolution

- 3.1 Local resolution is not an alternative to reporting the allegation to the Referrals Sub-Committee, but can avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Referrals Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Referrals Sub-Committee might take that into account when considering whether the matter merits investigation.

4 Review of Decisions not to Investigate

- 4.1 Where the Referrals Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Review Sub-Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information which was provided to the Referrals Sub-Committee in respect of the matter, the summary of the Referrals Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

5 Local Investigation

- 5.1 It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.
- 5.2 The Monitoring Officer is authorised to determine who will undertake a local investigation and this may include another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.

Shropshire and Wrekin Fire and Rescue Authority

Initial Assessment of Standards Complaints

Assessment and Review Criteria

1 Introduction

This paper sets out the criteria which the Referrals Sub-Committee will apply in conducting the initial assessment of allegations of failure by members to observe the Code of Conduct.

The Authority takes all allegations of member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines whether the complaint appears to show that there has been a breach of the Code of Conduct, and then whether the complaint should be subject to a formal investigation (either by Standards for England or locally under the direction of the authority's Monitoring Officer), whether the authority's Monitoring Officer should be directed to take other appropriate actions in respect of the complaint, or whether no action should be taken in respect of the complaint.

2 Local resolution of complaints

The Standards Committee is acutely aware that the formal investigation of complaints is costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.

The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. But any attempts at local resolution do not take away from the right of a complainant to have their complaint of member misconduct considered by the Sub-Committee.

3 Which complaints can be considered?

The Referrals Sub-Committee must consider every complaint that a member of the authority (or of any Parish or Town Council within its area) has failed to comply with the Code of Conduct which that authority has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:

- (a) persons who are not members of the authority (or a Parish or Town Council in its area)

- (b) conduct which occurred at a time when the person against whom the complaint was made was not a member of the authority (or of a Parish or Town Council in its area)
- (c) conduct which occurred before the relevant authority adopted a Code of Conduct. All local authorities were required to adopt a Code of Conduct in 2001. In practice, the Sub-Committee will expect complaints to be made promptly after the events to which they relate (see below)
- (d) conduct which occurred in the member's private life, as the Code of Conduct only applies to a member's conduct as a member of a local authority
- (e) conduct which occurred when the member was acting as member of another authority. Where a member is also a member of another authority (other than a Parish or Town Council within its area) which has its own Code of Conduct, then the complaint should be addressed directly to that authority.
- (f) complaints which do not relate to the apparent misconduct of a relevant member but are, for example, about the policies and priorities of the authority, or are a request for the provision of a service by the authority, or are a complaint about the conduct of an officer of the authority

Such complaints will not be referred to the Referrals Sub-Committee but will instead be dealt with by the Monitoring Officer who will advise the complainant as to the most appropriate avenue for proper consideration of their complaint or request.

4 Does the complaint appear to show a breach of the Code of Conduct?

The first assessment which will be undertaken by the Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

For this purpose, the Sub-Committee will take into account the complaint letter and any other information which is readily available to them.

Accordingly, it is the responsibility of a complainant to set out clearly:

- (a) who the complaint is against
- (b) what they understand that the relevant member did
- (c) why they consider that the member's conduct amounted to a breach of the Code of Conduct,

And to provide copies of any documents which they want the Sub-Committee to consider.

Following receipt of your complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, reports and minutes of a meeting of the authority at which the alleged misconduct occurred, or providing copies of the member's entry in the register of members' interests.

The Sub-Committee will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.

If the Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter.

5 Possible actions where an apparent breach of the Code of Conduct has occurred

Where the Sub-Committee has concluded that there appears to have been a breach of the Code of Conduct, it has four options available to it. These are as follows:

(a) direct the Monitoring Officer to secure that the complaint is investigated locally

A local investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction than the authority's Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the relevant authority for a period of more than 6 months, or disqualification as a member of any local authority. See paragraph 5(b) below for more detailed grounds for referring a complaint to Standards for England.

However, recognising that a formal investigation is an expensive and time-consuming process, and can only address the immediate subject matter of the complaint, the Sub-Committee can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(c) below.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Sub-Committee may determine that no action should be taken in respect of it. For more detail, see paragraph 5(d) below.

(b) **refer the matter to Standards for England with a request that the Board undertakes a national investigation into the complaint;**

The following factors will be considered by the Sub-Committee to be factors which support referring the complaint to Standards for England for a national investigation:

- (i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the relevant authority for a period of more than 6 months, or a disqualification from any local authority
- (ii) that the investigation required is so extensive that it would impose an unreasonable burden on the authority and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee
- (iii) that the status of the member against whom the complaint has been made or of the person by whom the complaint has been made is such that either the authority could not conduct a full and impartial investigation and hearing, or that there is likely to be a public perception that the authority could not conduct a full and impartial investigation and hearing
- (iv) that so many members of the Standards Committee have a conflict of interest in respect of the matter that the authority is going to be in difficulty in organising an impartial Hearings panel for the matter
- (v) that the complaint raises significant or unresolved legal issues where a national ruling would be helpful
- (vi) that the authority itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the authority
- (vii) that there are other exceptional circumstances which would prevent the authority from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the authority cannot secure a timely, full and impartial investigation and/or hearing of the matter.

(c) **direct the Monitoring Officer to take other appropriate action short of a formal investigation;**

The Referrals Sub-Committee cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts within the authority. A formal investigation and hearing would only deal with the particular complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where:

- (i) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct
 - (ii) the conduct complained of is apparently common to a number of members of that authority, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct
 - (iii) the conduct complained of is not so serious that it requires a substantive formal sanction such as suspension or disqualification
 - (iv) the complaint reveals a lack of guidance, protocols and procedures within the authority, for example on the use of resources or the process of decision-making
 - (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.
- (d) **decide to take no action in respect of the complaint.**

The following factors are likely to lead the Sub-Committee to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.

- (ii) the complaint is anonymous. The Sub-Committee can protect the confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the complaint is less serious, is malicious or is politically motivated
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because, where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly, and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence
- (iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

6 Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances which the Referrals Sub-Committee consider to be exceptional, for example:

- (a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed
- (b) the complainant is an officer who works closely with the member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed
- (c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. The Referrals Sub-Committee may wish to request medical evidence.

7 Withdrawing complaints

Where the complainant purports to withdraw the complaint before the Referrals Sub-Committee has had the opportunity to take a decision on it, the Sub-Committee will consider whether to accept such withdrawal.

In deciding whether to accept the withdrawal of the complaint the Referrals Sub-Committee may consider the following points:

- (a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Sub-Committee formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct, so that the matter is formally concluded.
- (b) Where the alleged misconduct is simply a matter of alleged failure on the part of the respondent to treat the complainant with respect, and raises no wider issues of public interest, the Sub-Committee will normally accept such withdrawal.

However, where the complaint raises issues of wider public interest, it may be appropriate for the Sub-Committee to ensure that such wider issues are formally investigated and resolved.

In the event that the complaint is withdrawn and that the withdrawal is accepted, the member who is subject to the complaint together with the clerk to the Parish Council concerned (if applicable) will be informed about the withdrawal of the complaint as soon as possible thereafter.

8 Review

Where the Referrals Sub-Committee has resolved to take no action in respect of a matter (that is, not to refer the matter to Standards for England for investigation, and not to refer the matter to the Monitoring Officer either for investigation or for other appropriate action), the complainant may request the Review Sub-Committee to review the decision of the Referrals Sub-Committee.

Such a review shall be conducted in two stages:

- (a) First, the Review Sub-Committee will determine whether the original decision of the Referrals Sub-Committee was unreasonable on the basis of the information available to the Referrals Sub-Committee at the time of its decision and in accordance with these approved criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the Referrals Sub-Committee, the decision-notice of the Referrals Sub-Committee and any information contained within the complainant's request for a review. Note that this is a review of the initial decision, rather than considering the matter afresh..
- (b) Second, the Review Sub-Committee shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

If the Review Sub-Committee determines that the initial decision was unreasonable, or that new information now available to the Sub-Committee demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.

Version 2 (last amended - June 2010)

Shropshire and Wrekin Fire and Rescue Authority Standards Committee

Local Investigation Procedure

1. Introduction

This procedure applies in relation to alleged breaches of the relevant Code of Conduct where the matter has been referred to the Monitoring Officer of the Authority for investigation.

2. Interpretation

- 2.1 'Code of Conduct' means the relevant Code of Conduct for Members of the Authority, including Non-Elected, Independent members of the Authority's Standards Committee.
- 2.2 'The Authority' means Shropshire and Wrekin Fire and Rescue Authority.
- 2.3 'Member' means the Member of the Authority, who is the subject of the allegation being investigated. It also includes, where appropriate, the Member's nominated representative.
- 2.4 'Standards Board' means Standards for England.
- 2.5 'ESO' means an Ethical Standards Officer employed by the Standards Board *for England*.
- 2.6 'Monitoring Officer' means the Monitoring Officer of the Authority.
- 2.7 'Investigating Officer' means the Monitoring Officer or his/her deputy or **any** other person instructed by the Monitoring Officer to conduct the local investigation, including an independent external investigator.
- 2.8 'The Standards Committee' means the Authority's Standards Committee and can also refer to a sub-committee set up by the Standards Committee.
- 2.9 'Complainant' means the person, who made the allegation being investigated.
- 2.10 'Corporate Services Manager' means the Authority officer appointed to this post or his/her representative.
- 2.11 'Local Protocol' means the following Protocols adopted by the Authority:
- Protocol on Member / Officer Relations
 - Protocol on Gifts and Hospitality for Members

3. Notification of Referral

3.1 Whenever an allegation is referred to the Monitoring Officer for investigation, the Monitoring Officer shall (unless otherwise directed by the Standards Committee or by an ESO):

- (i) Appoint an Investigating Officer, instructing him/her to conduct the investigation of the allegation. The Investigating Officer may be an officer of the Authority, an officer of another local authority or an external consultant. ***The Monitoring Officer may instruct the Authority's Deputy Monitoring Officer to act on his/her behalf in appointing an investigator.***
- (ii) Notify the Member in writing, confirming that the allegation has been referred for investigation, outlining the conduct, which is the subject of the allegation, and identifying the section(s) of the Code of Conduct, which appear to be relevant. The notification will also outline the procedure, which will be followed, and confirm the identity of the Investigating Officer ***if appointed at that stage.***
- (iii) Write to the Complainant confirming that the allegation has been referred for investigation and outlining the procedure to be followed.

3.2 ~~When notifying the Member, the Monitoring Officer (or the Investigating Officer) will also request the Member to provide a response in writing to the Investigating Officer within 21 days of notification. Such a response should:~~

- ~~(i) Indicate whether the Member admits or denies the breach of the Code of Conduct, which is the subject of the allegation and in so doing, identifies, which (if any) of the facts set out in the notification to the Member are disputed.~~
- ~~(ii) List any document, which the Member would wish the Investigating Officer to take into account in investigating the allegation, and include, where possible, copies of such documents. Alternatively, the Member should inform the Investigating Officer where any such documents may be located/inspected.~~
- ~~(iii) Provide the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person(s) or organisation(s), whom the Member would wish the Investigating Officer to interview in the course of the investigation.~~
- ~~(iv) In the event that the Member wishes to appoint a representative to act on his/her behalf during the investigation, provide the name and address of any such representative and indicate whether or not further contact (including correspondence, telephone calls etc) should be directed to that representative or whether contact should continue to be maintained with the Member. Where such a representative is appointed, this will be at the expense of the Member.~~

4. Conduct of the Investigation

- 4.1 In conducting the investigation, the Investigating Officer will at all times pay due regard to the Authority's obligations under the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation and to any relevant guidance issued by ~~the Standards Board~~ **for England**.
- 4.2 If the Investigating Officer uncovers, during the course of the investigation, evidence of a possible breach of the Code, which does not directly relate to the particular allegation under investigation, the Investigating Officer shall invite the person, from whom the evidence was received, to submit a written allegation to the Authority. Where evidence of a breach of a Local Protocol (but not a breach of the Code of Conduct) is uncovered, the Investigating Officer shall report it to the Monitoring Officer.
- 4.3 The Investigating Officer may appoint any person to assist him/her in the conduct of his/her investigation and may obtain such professional advice as he/she deems necessary during the investigation process.
- 4.4 The Investigating Officer will gather all appropriate information, documentation and other evidence sufficient to be able to present a report to the Standards Committee, which will enable the Committee to determine whether the Member has acted in breach of the Code of Conduct. The Investigating Officer may terminate the investigation at any time, if satisfied that there is sufficient information to enable such a report to be presented to the Standards Committee.
- 4.5 The Investigating Officer will ask all those, who are interviewed or otherwise contacted as part of the investigation, not to disclose information that they have received in confidence as part of the investigation in order to preserve the integrity of the investigation. The Investigating Officer will also remind any Members involved in the investigation of their obligation under the Code of Conduct, i.e. not to disclose information that they have received in confidence.

5. Reference back from the Monitoring Officer

- 5.1 If, during the course of the investigation, the Investigating Officer or the Monitoring Officer concludes that it would be inappropriate to continue with the investigation, the Monitoring Officer shall then decide (having regard, where relevant, to the provisions of Regulation 16 of The Standards Committee (England) Regulations 2008) whether:
 - (i) an alternative Investigating Officer should be appointed; or
 - (ii) the matter should be referred back to the Standards Committee for re-consideration.

NB Regulation 16 of The Standards Committee (England) Regulations 2008 covers 'References back from monitoring officer', and sets out circumstances when a complaint referred to a monitoring officer under section 57(2)(a) of the Local Government Act 2000 (as amended) for investigation can be referred back to the Standards Committee to provide a further assessment of the complaint in respect of new evidence or information that is available.

6. Investigation Procedure

6.1 List of Witnesses and Documents to be Examined

The Investigating Officer will prepare a list of persons to be interviewed, organisations, from which information is to be sought, and documents, which are to be inspected. This will include witnesses and documents identified by the Member, provided that the Investigating Officer is satisfied that this will assist the investigation

6.2 Production of Documents, Information and Explanations in the Course of an Investigation

The Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any documentation or information, which is in their possession or control, or provide any explanation as they think necessary, for the purpose of carrying out the investigation. The Investigating Officer may require any authority concerned, to meet the reasonable cost of providing this documentation or information.

6.3 Interviews in the Course of the Investigation

The Investigating Officer may request any person to attend and appear before him/her to provide any information or document considered necessary for the investigation.

6.4 Telephone Interviews

The Investigating Officer will not conduct any interviews by telephone unless the express permission of the interviewee has been obtained prior to the interview. In addition, in considering the appropriateness of conducting an interview by telephone, the Investigating Officer will have particular regard to the guidance issued by the Standards Board *for England*.

6.5 Representation

Any person who is called for interview by the Investigating Officer or contacted for information as part of the investigation may be represented or accompanied by, for example, a solicitor, friend or Union representative (at their own expense).

6.6 Interview Notes

The Investigating Officer will ensure that a note or transcript of every interview is made. Such a note or transcript must be forwarded to the interviewee as soon as practicable after the conclusion of the interview with a request that the interviewee confirms, subject to any amendments, which he/she may suggest, that the note or transcript provides a fair and accurate record of the interview.

7. Completing the Investigation and Preparing the Draft Report

- 7.1 The Investigating Officer shall conclude the investigation when he/she believes that there is sufficient information to meet the requirements, set out in 4.4 above, or when he/she has obtained such information as is likely to be reasonably capable of being obtained.
- 7.2 The Investigating Officer shall prepare a Draft Report containing the following:
- (i) A marking of 'Draft'
 - (ii) A marking of 'Confidential'
 - (ii) The date of the Report
 - (iv) The details of the allegation(s) originally made
 - (v) The relevant section(s) of the Code of Conduct
 - (vi) Details of the investigation process, information about the persons/organisations contacted, the way in which enquiries were made, the method and location for any interviews undertaken and confirmation as to whether payments were made in respect of expenses of those subject to the investigation
 - (vi) A copy of all supporting information
 - (viii) The Member's response to the allegation(s)
 - (ix) Details of any person or organisation, who has failed to co-operate during the investigation, and any outstanding information or documentation, which has not been provided
 - (x) The findings of fact (where any facts have been disputed)
 - (xi) The conclusion reached by the Investigating Officer as to whether, in his/her view, there has been a breach of the Code of Conduct, with supporting reasons for reaching such conclusion
 - (xii) Confirmation that the Draft Report does not represent the final findings and that these may be subject to change in the light of comments on the Draft

8. Procedure following Preparation of the Draft Report

8.1 The Investigating Officer shall ensure that copies of the Draft Report are sent to:

- (i) the Monitoring Officer
- (ii) the Member
- (iii) the Complainant

for them to submit their comments (if any) on the Draft Report by a date specified by the Investigating Officer.

9. The Final Report

9.1 After the expiry of the period allowed for submitting comments on the Draft Report (or any reasonable extension thereof, as allowed by the Investigating Officer), the Investigating Officer may amend the Draft Report as he/she considers appropriate and shall then produce the Final Report.

9.2 The Final Report must include the following:

- (i) All of the contents required for the Draft Report, as detailed in paragraph. 7.2 above, with the exception of those detailed in (i) and (xii)
- (ii) Confirmation that it is the Final Report

9.3 Within 5 working days of completing the Final Report, the Investigating Officer shall ensure that copies are sent to:

- (i) the Monitoring Officer
- (ii) the Member
- (iii) the Complainant

9.4 If the Investigating Officer has found that there has been no breach of the Code of Conduct, then his/her covering letter should explain that the Report will now be presented to the Standards Committee for consideration.

9.5 If the Investigating Officer has found that there has been a breach of the Code of Conduct, then his/her covering letter should explain that the matter will now ***be considered by*** ~~proceed to a hearing before~~ the Standards Committee ***to decide if the matter should proceed to a local hearing undertaken by the Standards Committee or whether it should be referred to the First Tier Tribunal.***

Shropshire and Wrekin Fire and Rescue Service Standards Committee

Local Hearing Procedure

1. Introduction

This procedure applies to hearings of an alleged breach:

- of the Code of Conduct where the investigation has been completed by an Ethical Standards Officer
- of the Code of Conduct where a local investigation has been carried out by or on behalf of the Monitoring Officer
- of a protocol adopted by the Authority

The Monitoring Officer has delegated authority to amend this procedure if required.

2. Interpretation

- 2.1 'Code of Conduct' means the relevant Code of Conduct for Members of the Authority, including Non-Elected, Independent Members of the Authority's Standards Committee.
- 2.2 'Complainant' means the person, who submitted the complaint of an alleged breach of the Code of Conduct or Protocol.
- 2.3 'the Authority' means Shropshire and Wrekin Fire and Rescue Authority
- 2.4 'Committee **Corporate** Services Manager' means the Authority officer appointed to this post or his/her representative.
- 2.5 'ESO' means the Ethical Standards Officer employed by the Standards **for England** Board or person taking conduct of the matter on his/her behalf.
- 2.6 'Investigating Officer' means the Monitoring Officer or his/her deputy or other person instructed by the Monitoring Officer to conduct a local investigation including an independent external investigator.
- 2.7 'Legal Adviser' means the person responsible for providing legal advice to the Standards Committee. This will normally be the Monitoring Officer, but may be another officer of the authority, who is legally qualified, or someone appointed for the purpose from outside the Authority.

- 2.8 'Member' means a Member of the Authority, who is the subject of a report into an allegation being considered by the Standards Committee. It also includes the Member's nominated representative.
- 2.9 'Monitoring Officer' means the Monitoring Officer for the Authority **and includes a Deputy Monitoring Officer acting in the absence of, or on behalf of the Monitoring Officer.**
- 2.10 'Panel' means the panel of Members from the Standards Committee appointed in accordance with this Procedure.
- 2.11 'Local Protocol' means the following Protocols adopted by the Authority:
- Protocol on Member / Officer Relations
 - Protocol on Gifts and Hospitality for Members
- 2.12 'Report' means the report of the ESO or the report of the Investigating Officer.
- 2.13 'Reporting Officer' means the person appointed under paragraph 3.5 below.
- ~~2.14 'Standards Board' means Standards for England.~~
- 2.14 'Standards Committee' means the Authority's Standards Committee **or the Committee exercising the functions of a Standards Committee.** It can also refer to a Sub-committee set up by the Standards Committee.

3 Consideration of the Final Report

- 3.1 After the investigator has provided the final copy of their report (as referred to in the local investigation procedure) the Corporate Services Manager will arrange a meeting of the Standards Committee to consider the final report.**
- 3.2 The consideration hearing can be by way of a sub-committee meeting and does not have to be the same sub-committee that may subsequently conduct a hearing of the matter for consideration. The sub-committee may be made up of members of the sub-committee that initially assessed the complaint.**
- 3.3 The consideration hearing may take place in public session but this will be a decision for the Standards Committee to make at the meeting before the report is considered. Prior to the meeting the report will not be made public. Regulation 8(6) of the Standards Committee (England) Regulations 2008 allows the consideration of any information presented at the meeting as exempt information considered in private session.**
- 3.4 If the final report found no breach of the code of conduct then the Standards Committee will decide whether or not to accept the finding in the report. The investigator does not need to attend this meeting. If the Standards Committee decides not to accept the finding consideration**

will be made as to how to proceed in accordance with paragraphs 3.6 and 3.7 of this procedure.

3.5 *If a finding of acceptance is made the Standards Committee will confirm that finding to the complainant and the Member(s) concerned. A notice of the decision will be drafted and sent to the Member in order to obtain permission for the notice to be published (in accordance with Regulation 17 of the Standards Committee (England) Regulations 2008). If the notice is to be published, this will be done by way of publishing in at least one newspaper circulating in the area and by placing it on the Authority's website.*

3.6 *If the Standards Committee considers the investigation report and decides that the matter should be heard by the Standards Committee, the procedure, as set out below from paragraph 4, will be followed*

3.7 *If the Standards Committee considers the investigation report and decides to refer the matter to the First Tier Tribunal for determination, the Monitoring Officer will proceed to refer the matter accordingly.*

4. Pre-Hearing Process

4.1 *Following a referral for local hearing from the Standards Committee, as set out in section 3 of this procedure, Within five working days of the final report being sent out (as set out in the local investigations procedure—section 9.3) the Committee **Corporate** Services Manager shall ask for a written response from the Member, within fifteen working days, stating whether or not he/she:*

- disagrees with any of the findings of fact in the Report, including the reasons for any disagreements
- wants to be represented, at their own expense, at the hearing by a solicitor, barrister or, with the permission of the Panel, any other person
- wants to give evidence to the Panel, either verbally or in writing
- wants to call relevant witnesses to give evidence to the Panel
- wants any part of the hearing to be held in private having regard to all guidance issued
- wants any part of the Report or other relevant documents to be withheld from the public
- can attend the hearing

- 4.2 The ~~Committee~~ **Corporate** Services Manager will also inform the Member that, if, at the meeting of the Panel, he/she seeks to dispute any matter contained in the Report, without having previously notified the ~~Committee~~ **Corporate** Services Manager of their intention to do so, the Panel may either:
- refuse to allow the disputed matter to be considered
 - allow the disputed matter to be considered but to invite the Investigating Officer or the ESO to respond and/or call witnesses
 - to adjourn the hearing to enable the Investigating Officer or ESO to respond
- 4.3 Upon receipt, the Member's response shall be forwarded to the Investigating Officer or ESO to comment, within fifteen working days, on the Member's response, to say whether or not he/she:
- wants to be represented at the hearing
 - wants to call relevant witnesses to give evidence to the Panel
 - wants any part of the hearing to be held in private, having regard to all guidance issued
 - wants any part of the Report or other relevant documents to be withheld from the public
- 4.4 If the ESO is not attending the hearing or being represented, the Monitoring Officer will appoint a Reporting Officer to conduct the matter. In that event references to the ESO in these procedures shall also mean the Reporting Officer.
- 4.5 Upon receipt of the Investigating Officer/ESO's response, the ~~Committee~~ **Corporate** Services Manager will forward the responses of the Member and the Investigating Officer/ESO to the Chair of the Panel.
- 4.6 The Member and the Investigating Officer/ESO are entitled to request that any witnesses they want should be called. However, the ~~Committee~~ **Corporate** Services Manager, in consultation with the Chair of the Panel, may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Panel to reach its decision.
- 4.7 Nothing in this procedure shall limit the ~~Committee~~ **Corporate** Services Manager in consultation with the Chair of the Panel from requesting the attendance of any additional witnesses, whose evidence he/she considers would assist the Panel to reach its decision.

4.8 At least two weeks before the date of the hearing the ~~Committee~~ **Corporate Services Manager**, in consultation with the Legal Adviser, will send to the Member, the Panel, the Investigating Officer/ESO, the Reporting Officer and the Legal Adviser the Pre-Hearing Process Summary (Appendix 1 Form F of the Standard **for England** ~~Board's~~ Guidance), which will include the following information:

- Confirmation of the date, time and place for the hearing, which must be within three months from the date that the Report was received
- A summary of the allegations
- The main facts of the case that are agreed
- The main facts that are not agreed
- Which witnesses will give evidence
- Whether the Member concerned or the Investigating Officer/ESO will attend or be represented at the hearing
- Outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private

5. Selection of the Hearing Panel

5.1 The ~~Committee~~ **Corporate Services Manager**, in consultation with Legal Adviser, shall appoint a sub-committee of five Members of the Authority's Standards Committee ("the Panel") to consider the Report.

5.2 Where a member of the Panel is unable to attend a meeting of the Panel, the Corporate Services Manager, in consultation with the Legal Adviser, shall appoint another member of the Standards Committee to attend the hearing. ***Another member of the Standards Committee does not need to be added to the Panel, if there is a conflict of interest or availability problems that may prevent them from taking part (provided the quorum of three is still maintained).***

6. Confidentiality and Disclosure of Information

Where the Legal Adviser considers that the Report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the Local Government Act 1972 and regulations), and in consequence that it is likely that the Panel will, during consideration of these papers, not be open to the public, he/she shall instruct the Corporate Services Manager not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

7. General Procedure at the Hearing

- 7.1 The Chair may agree to vary the procedure at the hearing, where, in consultation with the Legal Adviser, he/she is of the opinion that such a variation is necessary in the interest of fairness.
- 7.2 The purpose of the hearing is to decide on the balance of probability whether the Member has breached the Code/Protocol. In doing so, the Panel will consider the Report and any written or oral representations, made by the ESO, the Investigating Officer or the Member.
- 7.3 The Member may be represented or accompanied by a solicitor, counsel or, with the permission of the Panel, another person. The Panel may refuse permission for representation by another person, if, for example, it considers that that person is directly involved in the matter being determined.
- 7.4 The hearing will be open to the public and press, unless confidential information provided by a Government Department will be revealed or unless the Panel decides that the hearing or part of it should be held in private, having considered the representations of the parties and the guidance issue by the Standards *for England Board*.
- 7.5 The Panel may take legal advice from the Legal Adviser at any time during the hearing. Any legal advice will be given in the presence of all parties.
- 7.6 The Panel may ask the Member, the ESO, the Investigating Officer or any witness a question at any time during the hearing. It can also allow witnesses to be questioned by the Member, ESO or Investigating Officer or the Legal Advisor. All such questions must be directed through the Chair.
- 7.7 All matters/issues shall be decided in accordance with the ordinary decision-making procedure, with each Member having one vote and, in the case of equality of votes, the Chair having the casting vote.
- 7.8 The Panel can adjourn the hearing at any time.

8. Preliminary Procedural Issues

- 8.1 The Chair will introduce all the parties and will explain how the hearing will be conducted.
- 8.2 The initial order of business shall be as follows:
- For any member of the Panel to state whether he/she has an interest in the matter, which should be declared
 - To confirm that the Panel is quorate. A quorum is 3 Members, including a Non-Elected, Independent Member

- To consider any representations from the ESO, Investigating Officer and/or the Member as to whether the Panel should exclude the press and public from the hearing or parts of it. Where the Panel decides not to exclude the press and public, the Corporate Services Manager shall at this point provide copies of the papers to any members of the press and public, who are present.

8.3 If the Member has indicated that he/wishes to attend the hearing but is not present on the hearing date, the Panel will consider reasons, which have been given for his/her absence. If the Panel is satisfied with those reasons, it will arrange for the hearing to be held on another date. If no reasons are given, or the Panel is not satisfied with those given, it may proceed in the Member's absence.

9. Making Findings of Fact

9.1 After dealing with any preliminary issues, the Panel will consider whether or not there are any significant disagreements about the facts contained in the Report.

9.2 If there is no disagreement, the Panel will confirm its findings of fact.

9.3 If there is a disagreement, the ESO or Investigating Officer will be invited to make representations to support the relevant findings of fact in the Report. With the Panel's permission, the ESO or Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the ESO or Investigating Officer.

9.4 The Member will then have the opportunity to make representations to support his or her version of the facts and, with the Panel's permission may call any necessary witnesses to give evidence. The Panel may give the ESO or Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.

9.5 At the conclusion of various representations the Chair will check with the Panel whether it is satisfied that it has sufficient evidence to come to a conclusion on the matter.

9.6 If the Panel considers that it requires additional evidence it may at its discretion adjourn and make a request for this. It can only adjourn on one occasion for this purpose.

9.7 Where the Member seeks to dispute any matter in the Report, which he/she had not given notice of intention to dispute in his/her written statement in response, he/she must give good reasons for not mentioning it before the hearing. After considering the Member's explanation for not raising the issue at an earlier stage, the Panel may then:

- continue with the hearing, relying on the information in the Report; or
- allow the Member to make representations about the issue, and invite the ESO or Investigating Officer to respond and call any witnesses, as necessary; or
- postpone the hearing to arrange for the appropriate witnesses to be present, or for the ESO or Investigating Officer to be present.

9.8 The Panel will withdraw with the Legal Adviser to consider the representations and evidence. On its return, the Chair will announce the Panel's findings of fact.

10. Did the Member Fail to Follow the Code?

10.1 The Panel will then consider whether or not, based on the findings of fact, the Member has failed to follow the Code of Conduct/Protocol.

10.2 The Member should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code of Conduct/Protocol.

10.3 The Panel should then consider any representations from the ESO or Investigating Officer.

10.4 The Member should be invited to make any final relevant points.

10.5 The Panel will withdraw with the Legal Adviser to consider the various representations. On its return the Chair will announce its decision.

11. If the Member has not Failed to Follow the Code

11.1 If the Panel decides that the Member has not failed to follow the Code, it will announce the decision.

11.2 The Panel will ask the Member whether, in the light of a finding of no breach of the Code, he/she wishes a summary of the decision to be published.

12. If the Member has Failed to Follow the Code

12.1 If the Panel decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the ESO or the Investigating Officer and the Member as to:

- whether or not the Panel should set a penalty.
- what form the penalty should take.

- 12.2 Having heard any representations, the Panel will then consider in private session, accompanied by the Legal Adviser, whether or not to impose a penalty and, if so, what the penalty should be.
- 12.3 In deciding what penalty to set, the Panel will consider all relevant circumstances, including those covered in the Guidance produced by the Standards Board. Penalties may start immediately or up to six months after the hearing, if the Panel wishes.

13. Penalties which May be Imposed

13.1 The Member may be:

- censured (This is the only form of penalty available when dealing with a person, who is no longer a Member of the Authority); or
- restricted access to the premises and/or resources of the Authority for a maximum period of six months; or
- suspended or partially suspended for a maximum period of six months; or
- required to submit a written apology in a form specified by the Panel; or
- required to undertake training, as specified by the Panel; or
- required to undertake conciliation, as specified by the Panel; or
- suspended or partially suspended for a maximum period of six months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Panel

13.2 Where access to resources or premises is restricted, the Panel will ensure that the restrictions are proportionate to the nature of the breach and do not unduly restrict the Member's ability to perform his or her duties as a Member.

14. Reference back to the ESO

At any time prior to the conclusion of the hearing the Panel may adjourn and make a written request to the ESO to take the matter back to undertake an investigation. If it does so, it must set out its reasons for making the request.

15. Notice of Decision

- 15.1 At the conclusion of the hearing the Chair will announce the decision and the reasons for it.
- 15.2 The Corporate Services Manager will make a short written decision available on the day of the hearing.

15.3 Within two weeks of the conclusion of the hearing the Corporate Services Manager will circulate the full written decision, in the format recommended by the Standards **for England** Board, to

- the Member,
- the Complainant,
- ~~the Standards **for England** Board,~~
- the Standards Committee of any other local authority of which the Member is also a member.

16. Publication of Summary of Decision

16.1 Within two weeks of the hearing, the Corporate Services Manager shall arrange for a summary of the decision to be published in one newspaper circulating in the area of the Member's Authority and on the Authority's web site.

16.2 Where the Panel determines that there has not been a breach of the Code of Conduct, the Notice shall:

- (i) state that the Panel found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
- (ii) not be published in a local newspaper or on the Authority's website, if the Member so requests.

16.3 Where the Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the Notice shall:

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

16.4 Where the Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:

- (i) state that the Panel found that the Member had failed to comply with the Code of Conduct;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached;

- (iv) specify the sanction imposed; and
- (v) state that the Member concerned may apply for permission to appeal against the determination.

17. Availability of Agenda, Reports etc.

- 17.1 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

18. Appeal

- 18.1 Where the Panel determines that the Member has failed to comply with the Code of Conduct, the Corporate Services Manager shall inform the Member of his or her right to seek permission to appeal against the determination to an appeal tribunal, drawn from the Adjudication Panel, within 21 days of the Member's receiving Notice of the Panel's decision. Any party to an appeal will bear their own costs in relation to that appeal.