

CARLISLE CITY COUNCIL

Report to:- **Standards Committee**

Date of Meeting:- **6 January 2005**

Agenda Item No:-

A1

Public

Operational

Delegated: Yes

Accompanying Comments and Statements

Required

Included

Environmental Impact Statement:

No

No

Corporate Management Team Comments:

No

No

Financial Comments:

No

No

Legal Comments:

Yes

Yes

Personnel Comments:

No

No

Impact on Customers:

No

No

Title:-

LOCAL INVESTIGATION OF STANDARDS COMPLAINTS

Report of:-

Head of Legal and Democratic Services

Report reference:-

LDS. 59/04

Summary:-

The report informs Members of the effect of new regulations and advice from the Standards Board for England on investigating code of conduct complaints locally, and seeks approval to a model procedure for carrying out such local investigations.

Recommendations:-

It is recommended that the Committee:

1. Notes the implementation of the Regulations enabling complaints into alleged breaches of the Code of Conduct to be investigated locally and the Standards Board Guidance on how such investigations should be carried out summarised in this report.
2. Approves the procedure for carrying out local investigations attached as Appendix 1 which reflects the Standards Board Guidance.

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

3. Notes the proposal to monitor the potential budgetary consequences which may arise from the new duty to carry out local investigations.
4. Authorises the Head of Legal and Democratic Services to make appropriate amendments to both of the previously approved procedures for hearing complaints following investigation and report by an ESO and by a local investigating officer in order to bring them into line with the new regulations and guidance.

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Head of Legal and Democratic Services

LOCAL INVESTIGATION OF STANDARDS COMPLAINTS

1. INTRODUCTION

- 1.1 New regulations now enable the Standards Board for England to refer complaints of Councillor misconduct to the Monitoring Officer of a local authority for local investigation, instead of investigation by the Standards Board's Ethical Standards Officers, before a complaint is determined by the Authority's Standards Committee. The Standards Board has published guidance as to how local authorities should arrange for the conduct of such local investigations, and the first cases will now start to be referred to individual authorities for local investigation and determination under these regulations. The regulations also make important amendments to the powers of Standards Committees, even in cases which have been investigated by an Ethical Standards Officer (ESO).
- 1.2 This is a further step in giving local authority Standards Committees responsibility for complaints of Councillor misconduct, and will assist the Standards Board in ensuring that the less serious complaints are dealt with promptly.
- 1.3 This report sets out the implications of the regulations and recommends a model procedure for such local investigations which is attached as Appendix 1.

2. PRE-INVESTIGATION

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

3. LOCAL INVESTIGATIONS

3.1 Receipt of the Complaint

Under the new regulations, where the case is referred by the Standards Board for investigation, it goes to an ESO who decides whether to allocate it to one of the Standards Board's own investigators or, now, to refer it to the authority's Monitoring Officer. The ESO will not refer matters for local investigation by Monitoring Officers where the serious nature of the matter means that it is likely to require a sanction in

excess of the Standards Committee's maximum sanction of 3 months' suspension. Other criteria highlighted by the Standards Board in deciding whether to refer for local investigation are :

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

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

In referring a complaint to the Monitoring Officer, the ESO will send a copy of the original complaint letter and of any other relevant information which he/she possesses. In exceptional cases, such as a single letter containing a number of different complaints, the ESO may edit the complaint letter and merely pass on those parts relevant to the particular complaint. On receipt of the referred complaint, the Monitoring Officer will notify the Councillor, the complainant and the Parish Clerk (if it is a Parish or Town Council matter) and will arrange for the investigation.

The Standards Board recommends that at this point the Monitoring Officer notify the members of the Standards Committee in a confidential memorandum that he/she is conducting an investigation, but should not inform them of the identity of the member or the complainant in order to avoid any risk of prejudicing any subsequent hearing. Some commentators have suggested that, whilst appreciating the risk of prejudice, it might be better to provide members under a requirement for confidentiality with fuller information relating to the name of the Councillor against whom the complaint is made and details of the nature of the complaint. However, the Standards Board guidance on the point is clear and it is suggested it should be followed as set out and the attached model procedure for investigations therefore reflects the Standards Board guidance.

3.2 Appointment of the Investigating Officer

The Monitoring Officer remains the chief adviser to the Standards Committee and the primary contact for Councillors who have enquiries on standards issues, such as whether they have a personal or prejudicial interest in a particular matter. The role of acting as adviser to the Standards Committee on a particular complaint is incompatible with personally undertaking the Investigating Officer role into that complaint, which includes presenting the investigation report at any local standards hearing in respect of that same matter. The Monitoring Officer will therefore need to appoint another person to undertake the investigation or, if he is to investigate, appoint another person to advise the Committee at the hearing. In appropriate cases, the Monitoring Officer will usually be able to appoint another officer of the authority to undertake the investigation, but in sensitive cases or where conflicts of interest render the appointment of another officer in the authority not possible then it may be necessary to appoint an outside investigator, either borrowing from another authority

for the purpose of appointing an experienced commercial investigator. Whilst the Monitoring Officer has a statutory power to make such appointments, it may be necessary at some point to make financial provision for the cost of such investigations. The actual cost is hard to estimate as we have no experience of the number or nature of the matters which will be referred for local investigation and what necessity, if any, there may be for an outside investigator to be appointed. It is suggested therefore that the position be kept under review over the next year when the necessity or otherwise for funding can be identified and, if needed, included in a future budget bid.

The Investigating Officer will be required to produce a full report, setting out his conclusions as to the facts of the matter and whether the Councillor did or did not fail to comply with the Code of Conduct. One area of particular concern to any Investigating Officer will be the risk of a defamation claim from the Councillor or any other person mentioned in the report. The likelihood of such a claim is very low, but the Head of Finance has been requested to verify that the Council's insurance cover would extend to an Investigating Officer if such circumstances were to arise.

Note also that the position of the Monitoring Officer as prime point of advice to individual members on standards issues may give rise to other conflicts of interest which would rule the Monitoring Officer out from acting as the legal adviser to the Standards Committee for individual case hearings where the Monitoring Officer had previously advised the Member on the subject of the complaint. Accordingly, the Monitoring Officer may need to arrange for another legal officer to act as the legal adviser to the Standards Committee for individual case hearings where such a conflict occurs. This will usually involve nominating another suitable officer in the authority (most likely the Legal Services Manager) but could require borrowing such an adviser from another local authority or instructing a private practice solicitor for this purpose.

3.3 Procedure for Local Investigations

The Standards Committee needs to approve a procedure for local investigations, which will form part of the instructions to the Investigating Officer and will inform both the Councillor and the complainant as to how the matter will be dealt with. Attached as Appendix 1 is a recommended procedure for local investigation which complies with the regulations and guidance from the Standards Board. Under this procedure, the investigation would run as follows:

- a. The Monitoring Officer advises the Councillor, the Complainant and any Parish Council of receipt of the complaint, of the identity of the Investigating Officer and of the Investigation Procedure. He/she will also provide the Councillor with a copy of the complaint;
- b. The Investigating officer will contact the Councillor and the complainant for their comments and to identify any persons whom he/she should interview and any evidence which he/she should examine;
- c. The Investigating Officer will conduct such interviews as appear to him/her to be necessary, including more detailed interviews with the Councillor if required;
- d. The Investigating Officer will send his full draft report to the Councillor and the complainant, and at least extracts to any person who has provided evidence

which he/she has relied upon in writing the report, and give them 14 days for them to send him any comments or suggested corrections on the draft report;

- e. The Investigating Officer will produce a final report, taking account of any such comments and suggested corrections and send it to the Monitoring Officer;
- f. Where the Investigating Officer concludes that there has not been a failure to comply with the Code of Conduct, he/she will report to the Standards Committee. The Standards Committee will consider the report and any representations from the Councillor and will either:
 - i. accept the Investigating Officer's conclusions and take no further action, or
 - ii. resolve that the matter should be considered at a formal hearing. Note that this is not a finding of fault on the part of the Councillor but merely a conclusion by the Standard's Committee that they are not prepared at that stage to accept the Investigating officer's conclusions and that the matter merits examination at a formal hearing.
- g. Where the Investigating Officer concludes that there has been a failure to comply with the Code of Conduct, the matter must go to a formal hearing without such a preliminary step as set out in paragraph (f) above.
- h. If the matter goes to a formal hearing, that hearing would be conducted in exactly the same manner as a formal hearing on an ESO's report except that the Investigating Officer takes the place of the Standards Board's representative in presenting the report and introducing any relevant evidence and witnesses.

Under this procedure, in order to prevent any prejudice to the Standards Committee's role in eventually determining the complaint, members of the Standards Committee will not be advised of the progress of that investigation, until they receive the agenda and papers, including the Investigating Officer's report, for the meeting which is to consider that report.

3.4 Additional Failures to Comply with the Code of Conduct

Where an ESO is conducting an investigation and identifies evidence of additional failures to comply with the Code of Conduct, either by the original Councillor or by other Councillors, he/she can add those matters into his/her investigation and report. The regulations provide that where a matter is referred for local investigation, the Investigating Officer's remit is limited to the conduct which comprises the subject matter of the original complaint. Accordingly, where he/she identifies additional matters outside the scope of the original complaint, he/she will not be able to add them into his/her investigation. However, his/her remit is to conclude whether the conduct constitutes a failure to comply with the Code of Conduct, and he/she is therefore entitled to conclude that the conduct constitutes a failure to comply with paragraphs of the Code of conduct other than those specifically cited by the complainant. By way of example, if the complaint were one of rudeness by one Councillor to another, the Investigating Officer would not be entitled to include in his investigation any other instances of such rudeness, but would be entitled to conclude that the instance complained of constituted a failure to treat others with respect, even

if the original complaint only suggested that it was conduct likely to bring the authority into disrepute.

3.5 Reference back to the Standards Board

Matters will be referred by the Standards Board for local investigation at an early stage. It is therefore possible that, during the course of the investigation, it becomes apparent that the conduct complained of is much more serious and that a Case Tribunal, with powers to impose sanctions of up to one year's suspension or up to five year's disqualification, would be the appropriate form for any hearing of the matter, rather than a Standards Committee with a limited power to suspend the Councillor for up to 3 months. The regulations (and the recommended investigation procedure) therefore provide that, at any time during the course of an investigation, the Investigating officer can report to the Monitoring Officer who can request the ESO to resume responsibility for the investigation. The final decision to resume such responsibility rests with the ESO.

4. LOCAL HEARINGS

The regulations also make certain changes in respect of the conduct of local hearings and these are summarised below. The Committee, some time ago, approved the procedures to be adopted at a local hearing in both cases where an investigation and report had been completed by an ESO or by a local investigating officer, both procedures being virtually identical. The previously approved procedures require some minor amendments to pick up changes in the regulations and it is requested that authority be given to the Head of Legal and Democratic Services to make those amendments.

4.1 Timing

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

4.2 Additional Evidence

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

4.3 Sanctions

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

- a. censure;
- b. restriction of access to Council premises or use of Council resources for up to 3 months;
- c. a requirement to give a written apology;

- d. a requirement to undergo training;
- e. a requirement to undertake conciliation;
- f. suspension or partial suspension for a period of up to 3 months, and
- g. suspension or partial suspension until the Councillor undertakes training or conciliation or provides a written apology.

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

4.4 Reference back to the Standards Board

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

5. COSTS OF INVESTIGATIONS OF PARISH COUNCIL MATTERS

District and Unitary authorities remain responsible for standards matters in respect of Parish and Town Councils in their own areas. The regulations provide that where, in the course of an investigation, the Investigating Officer requires a Parish or Town Council to provide any advice or assistance in connection with the investigation, the District or unitary authority shall meet any reasonable costs incurred by the Parish or Town Council in providing such advice or assistance. Accordingly, where the District or Unitary authority is required to arrange the investigation of a complaint against a Parish or Town Councillor, the District or Unitary authority not only has to bear the direct costs of the investigation and any subsequent hearing but, in addition, if the Investigating Officer requires the Parish or Town Council to provide information for the investigation, such as copies of any Codes of Conduct, minutes of meeting, records of the Parish or Town Council's land ownerships, contracts or other activities, the Parish or Town Council can recover the costs of providing such information from the District or Unitary authority. The extent of this potential budgetary consequence cannot be determined yet in the absence of any operating experience but, as mentioned above, it is suggested that the position be monitored over the coming year.

6. LOCAL PROTOCOLS

The Council has adopted the following local protocols as additional local guidance for members:

- a. Protocol on Member / Officer Relations
- b. Planning Code for Development Control matters

c. The Use of IT by Members

These local protocols do not form part of the Code of Conduct for Members and so are not enforced by the Standards Board for England unless the particular conduct is also a failure to comply with the Code of Conduct, for example where a failure to treat an officer with "respect, dignity and courtesy", as required by the Member / Officer relations Protocol, also constitutes conduct likely to be in breach of the Code of Conduct as well.

Enforcement of such local protocols rests with the Council, which delegates that responsibility to the Standards Committee, although certain sanctions may require to be confirmed by Council. The process for enforcing such protocols must be fair, so it is appropriate to apply the same procedures for local investigation and local hearings to complaints of breach of local protocols as to complaints referred from the Standards Board. The only changes would be that such complaints would only require such enforcement where the Monitoring Officer was unable to resolve the matter to the satisfaction of the complainant, and there would be no scope for referring the matter back to the Standards Board for England as local protocols as such are outwith the Board's remit.

7. RECOMMENDATIONS

It is recommended that the Committee:

- 7.1 Notes the implementation of the Regulations enabling complaints into alleged breaches of the Code of Conduct to be investigated locally and the Standards Board Guidance on how such investigations should be carried out summarised in this report.
- 7.2 Approves the procedure for carrying out local investigations attached as Appendix 1 which reflects the Standards Board Guidance.
- 7.3 Notes the proposal to monitor the potential budgetary consequences which may arise from the new duty to carry out local investigations.
- 7.4 Authorises the Head of Legal and Democratic Services to make appropriate amendments to both of the previously approved procedures for hearing complaints following investigation and report by an ESO and by a local investigating officer in order to bring them into line with the new regulations and guidance.

John Egan
Head of Legal and Democratic Services

APPENDIX 1

CARLISLE CITY COUNCIL

Procedure for Local Investigation of Referred Complaints

Introduction and Summary

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

This procedure applies to breaches of the authority's Code of Conduct for Members. The authority has also resolved that the same procedure shall apply to the investigation of allegations of breaches of the authority's local protocols, in so far as they apply to Councillors.

Where the Standards Board for England receives an allegation that a Councillor has breached the authority's Code of Conduct for Members, the Board refers the allegation to an Ethical Standards Officer for investigation. At any point in that investigation the Ethical Standards Officer may determine that the allegation should be referred to the authority's Monitoring Officer (*or in the case of a Parish or Town Council, to the Monitoring Officer of the local District or Unitary Authority*). If the matter is referred before the Ethical Standards Officer has completed his/her investigation, the Monitoring Officer is then required to arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee (*or to a Sub-Committee of the Standards Committee convened for the purpose*). Similarly, when the Monitoring Officer receives an allegation of a failure by a Councillor to comply with a local protocol, and he is of the opinion that the allegation merits investigation, he shall arrange for an Investigating Officer to investigate the allegation and to report the matter to the authority's Standards Committee. Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority's Code of Conduct for Members or a local protocol, the Standards Committee must meet to decide whether to accept that finding or to proceed to a formal hearing. Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct for Members or a local protocol, or where the Standards Committee decides to hold a full hearing, there will then be a formal hearing to determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence.

In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the authority's Code of Conduct for Members or a local protocol, and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the

information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

1. Interpretation

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

2. Notification of Reference of Allegation to the Monitoring Officer

(a) Appointment of Investigating Officer

Upon receipt of the allegation from an Ethical Standards Officer, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the authority's Standards Committee. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external Investigating Officer.

The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

(b) Notification to the Councillor

The Monitoring Officer will then notify in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) of the conduct which is the subject of the allegation;
- (iv) of the section(s) of the Code of Conduct or local protocol which

appear to him to be relevant to the allegation;

(v) of the procedure which will be followed in respect of the allegation, and

(vi) of the identity of the Investigating Officer.

The Monitoring Officer shall provide the Councillor with a copy of any report received from the Ethical Standards Officer.

(c) Notification to the Standards Committee

At the same time as notifying the Councillor, the Monitoring Officer will notify the Standards Committee that he/she is carrying out an investigation by confidential memorandum to the Chairman and Members of the Committee. Such notification will not name the person who made the allegation or the Councillor.

(d) Notification to the Parish or Town Council Clerk

Where the allegation relates to the conduct of a member of a Parish or Town Council in his/her capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish or Town Council concerned in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Notification to the Person who made the Allegation

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

(f) Initial response of the Councillor

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

(i) advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct or local protocol which is the subject of the allegation;

(ii) listing any documents which the Councillor would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,

(iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation, and

(iv) providing the Investigating Officer with any information which

the Councillor would wish the Investigating Officer to seek from any person or organisation.

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

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

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

3. Conduct of Investigation

(a) Purpose of the Investigation

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

(b) Termination of the Investigation

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

(c) Additional Matters

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

- (i) *(where the additional matter relates to an apparent breach of the authority's Code of Conduct by a member of the principal authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct,. The Monitoring Officer will then determine whether to report the additional matter to the Standards Board;
 - (ii) *(where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct by a member of the principal authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's local protocols. The Monitoring Officer will then take a decision whether to refer the matter to an Investigating Officer for local investigation and report to the Standards Committee as appropriate. Where the original matter relates to an allegation of breach of a local protocol, and the additional matter relates to a further breach of a local protocol of the same authority, the Monitoring Officer may, with the consent of the Councillor, request the original Investigating Officer to extend his investigation to include the additional matter;
 - (iii) *(Where the additional matter relates to an apparent breach of the Code of Conduct or a local protocol by a Parish or Town Councillor)* notify the Clerk to the Town or Parish Council of the additional matter, and take no further action in respect thereof.
- (d) Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(f)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.
- (e) Production of documents, information and explanations
- (i) In the course of the investigation, the Investigating Officer 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 document or information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.

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

(f) Interviews

(i) Requesting attendance

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

(ii) Representation

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

(iii) Notes of interviews

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

(g) Costs

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his/her request, such fees or allowances as he/she considers to be appropriate subject to any maxima set by the authority.

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

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

- (i) that the seriousness of the matters which he/she is investigating, including any additional matters identified under Paragraph 3(c) above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or

- (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter,

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

Where the Ethical Standards Officer does resume his investigation, the Monitoring Officer shall ensure that the Councillor concerned, the person who made the complaint, the members of the Standards Committee and any Parish or Town Council are informed of such resumption. Where the Ethical Standards Officer declines to resume his investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his investigation.

4. The Draft Report

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

preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. *Where the allegation relates to a Parish or Town Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards Committee make to the Parish or Town Council.*

- (b) The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the investigating Officer will present a final report to the Standards Committee once he/she has considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.
- (d) The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

5. The Final Report

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

- (i) The person who made the complaint;
- (ii) The Clerk to the Parish or Town Council (if any); and
- (iii) The Ethical Standards Officer

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

- (d) Where the Standards Committee considers the report in accordance with Paragraph 5(b)(i) above, it shall make one of the following findings:

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

- (e) Where the Standards Committee finds as set out in Paragraph 5(d)(i) or (ii) above (no failure to comply with the Code of Conduct or with a local protocol), the Monitoring Officer shall, as soon as practicable thereafter, send a written notice of that finding and the reasons on which it was based, together with a copy of the Investigating Officer's report to

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

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

- (f) Where the Standards Committee finds as set out in Paragraph 5(d)(iii) above (that the matter should be considered at a full hearing) or the

Investigating Officer's report contains a finding that the Councillor did fail to comply with the Code of Conduct or a local protocol, the Monitoring Officer shall arrange for the matter to be considered at such a hearing in accordance with the authority's adopted Procedure(s) for Local Determination Hearings.