



BROMSGROVE DISTRICT COUNCIL

MEETING OF THE STANDARDS COMMITTEE

WEDNESDAY, 22ND JULY 2009 AT 6.00 P.M.

CONFERENCE ROOM, THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE

MEMBERS: Independent Members: Mr. N. A. Burke (Chairman), Mrs. N. E. Trigg (Vice-Chairman) and Ms. D. Roberts
Councillors: Miss. D. H. Campbell JP, Mrs. A. E. Doyle and E. C. Tibby
Parish Councils' Representatives: Mr. J. Cypher and Mr I. A. Hodgetts
Observer: Mr. S. Malek (Non-voting Deputy Parish Councils' Representative)

AGENDA

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest
3. To confirm the accuracy of the minutes of the meeting of the Standards Committee held on 20th May 2009 (Pages 1 - 10)
4. Monitoring Officer's Report (Pages 11 - 20)
[To receive a report from the Monitoring Officer on any matters of relevance to the Committee.]
5. Parish Councils' Representatives' Report
[To receive a report from the Parish Councils' Representatives on any matters of relevance to the Committee, and to include an update on the meeting of the Bromsgrove Area Committee of the Worcestershire County Association of Local Councils held on 3rd June 2009.]

6. The Standards Committee (Further Provisions) (England) Regulations 2009 (Pages 21 - 68)

[To receive a report on the Standards Committee (Further Provisions) (England) Regulations 2009 which came into force on 15th June 2009.]

7. Publications (Pages 69 - 84)

[Attention is drawn to the list of publications detailed below which members of the Committee may find of interest. Those publications which are of direct relevance to the Committee have been copied and are attached for reference. The links of other publications have been included should members wish to view these online:

- (i) Standards Board for England: *Other Action Guidance* (copy attached);
- (ii) BMG Research: *Stakeholder Tracker 2009 (Satisfaction with the Standards Board for England and Attitudes to the Ethical Environment)*. Prepared for the Standards Board for England. Link: http://www.standardsforengland.gov.uk/Research/2009reports/Report_7166_D31.pdf
- (iii) Centre for Local & Regional Research, Cardiff University: *Assessing the Impact and Effectiveness of the Ethical Framework in Local Government in England*. First Interim Report to the Standards Board for England. Link: <http://www.standardsforengland.gov.uk/Research/2008reports/SBE%20Research%20Report%20Final%20Year1%2022.04.09.doc2.pdf>
- (iv) Standards Board for England: *Bulletin 44*. Link: <http://www.standardsforengland.gov.uk/media/Bulletin%20Issue%2044.pdf>

8. Work Programme (Pages 85 - 90)

[To consider the future Work Programme of the Committee.]

9. To consider any other business, details of which have been notified to the Head of Legal, Equalities and Democratic Services prior to the commencement of the meeting and which the Chairman, by reason of special circumstances, considers to be of so urgent a nature that it/they cannot wait until the next meeting

10. Exclusion of the Public

[Should it prove necessary, in the opinion of the Chief Executive, to exclude the public from the meeting at any point during the proceedings in relation to any items of business on the grounds that either exempt and/or confidential information is likely to be divulged, the following resolution(s) will be moved:

"That under Section 100 I of the Local Government Act 1972, as amended, it/they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended, the relevant paragraphs of that part being (...to be specified by the Chairman at the meeting), and that it is in the public interest to do so.", and/or

"That under Section 100 A of the Local Government Act 1972, as amended, it/they involve the likely disclosure of confidential information which would be in breach of an obligation of confidence."]

K DICKS
Chief Executive

The Council House
Burcot Lane
BROMSGROVE
Worcestershire
B60 1AA

14th July 2009

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Agenda Item 3

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE STANDARDS COMMITTEE

WEDNESDAY, 20TH MAY 2009 AT 6.00 P.M.

PRESENT: Independent Members: Mr. N. A. Burke, Ms. D. Roberts and Mrs. N. E. Trigg
Councillor: Mrs. A. E. Doyle
Parish Councils' Representatives: Mr. I. A. Hodgetts and Mr. S. Malek
(substituting for Mr. J. Cypher)

Officers: Mrs. C. Felton, Mrs. D. Warren and Ms. D. Parker-Jones

1/09 **ELECTION OF CHAIRMAN**

RESOLVED that Mr. N. A. Burke be elected Chairman of the Committee for the ensuing municipal year.

2/09 **ELECTION OF VICE-CHAIRMAN**

RESOLVED that Mrs. N. E. Trigg be elected Vice-Chairman of the Committee for the remainder of her term of office.

3/09 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors E. C. Tibby and Miss D. H. Campbell JP and Mr. J. Cypher, Parish Councils' Representative.

4/09 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

5/09 **MINUTES**

The public minutes of the meeting of the Standards Committee held on 31st March 2009 were submitted.

RESOLVED that the minutes be approved as a correct record.

6/09 **COUNCIL DECISIONS**

A report advising of the decisions made by the Council at its meeting on 29th April 2009 in relation to the Terms of Office of the Parish Councils' Representatives on the Standards Committee and the Planning Services Code of Practice was submitted.

RESOLVED that the report be noted.

7/09

STANDARDS BOARD FOR ENGLAND FINAL REPORTS ON ALLEGED BREACHES OF THE BROMSGROVE DISTRICT COUNCIL CODE OF CONDUCT

Following referrals from the Standards Assessment Sub-Committee in June and July 2008, the Committee received, for information only, the final reports of the Standards Board for England's Ethical Standards Officer on the outcomes of the investigations into three separate allegations that Councillor Peter McDonald had breached the Bromsgrove District Council Code of Conduct. In each of the cases the Ethical Standards Officer had made a finding that Councillor McDonald had not failed to comply with the Code.

Copies of the Ethical Standards Officer's final reports, which were both exempt in accordance with Section 100 I of the Local Government Act 1972, as amended, as they involved the likely disclosure of exempt information as defined in paragraphs 1, 2, 3 and 7A of Part I of Schedule 12A to the Act, and confidential in accordance with Section 100 A of the Local Government Act 1972, as amended, as they included information provided under Section 63 of the Local Government Act as part of an Ethical Standards Officer's investigation under Part III of the Local Government Act 2000, appeared later in the agenda. Copies of the Standards Board's public case summaries of the Ethical Standards Officer's reports were included in the open part of the agenda.

RESOLVED that the Standards Board for England's Ethical Standards Officer's findings of no breach in relation to the three separate allegations against Councillor McDonald be noted.

8/09

MONITORING OFFICER'S REPORT

The Committee noted the contents of the Monitoring Officer's report and the following issues were raised during consideration of this:

- (i) Member Investigations/Associated Matters and Complaints for Local Assessment

The Deputy Monitoring Officer advised that no new complaints had been received since publication of the agenda.

- (ii) Member Training

The Monitoring Officer stated that a meeting of the Member Development Steering Group had taken place the previous week, at which it had been agreed that elected Members had until mid June 2009 by which to complete any appropriate training for the committees, boards or panels on which they now sat. A date had been set for Councillor Mrs. Doyle to attend Standards Committee/Code of Conduct training and it was noted that Councillor Mrs. Doyle had also attended the Mock Standards Assessment Sub-Committee training which had taken place on 11th May 2009. The Committee heard that 38 of the Council's 39 elected Members were due to attend planning training

the following evening, which represented the seriousness with which Members took their regulatory commitments.

In relation to the Council's success in achieving Primary level of the West Midlands Local Government Association Member Development Charter, and with the onset of the 2009/10 municipal year, the Monitoring Officer was currently working with the Council's Learning and Organisational Development Manager to identify any Member requirements over the proceeding twelve months. Monitoring and evaluation would be the key elements in obtaining the next level of the Member Development Charter.

The Council's further success in obtaining Level 3 of the Equality Standards for Local Government was also noted, which was felt to be of particular significance given the limited resources available in this area to district councils.

(iii) Parish Council matters

It was noted that a report detailing the Council's decision in relation to the Terms of Office of the Parish Councils' Representatives on the Standards Committee appeared later in the agenda.

(iv) Annual Report of the Standards Committee

Officers apologised that it had not been possible for a draft of the Annual Report to be produced in time for the meeting. It was agreed that this would be drawn up as soon as possible and that a copy of the draft Report be sent to all members of the Committee for comment, following which officers could finalise this in consultation with the Chairman, without the need of referring this back to a further meeting of the Committee for final approval.

(v) Standards Board Annual Assembly

The Deputy Monitoring Officer highlighted the Standards Board's Annual Assembly which was taking place in Birmingham on 12th and 13th October 2009. Members of the Committee were asked to contact the Monitoring Officer if interested in attending this. No expressions of interest were expressed at the meeting.

(vi) Standards Board Annual Return

The Deputy Monitoring Officer informed the Committee that officers had recently completed the Standards Board's annual on-line return, which covered the period 8th May 2008 (the introduction date of local assessment) to 31st March 2009. The Annual Return informed the Standards Board of the processes and procedures which the Council operated to manage the local standards framework and had included much more detail than in previous years.

Members heard that there was a section of the return associated with leadership which had questioned existing links between the Standards

Committee and the Council's senior officers and politicians. Based on current arrangements, a number of negative responses had had to be given to these questions and it was agreed therefore that a report on this would be referred to the next meeting of the Committee.

RESOLVED:

- (a) that the report be noted;
- (b) that any action points detailed in the preamble above be acted upon and reported back to the Committee as appropriate; and
- (c) that authority be delegated to officers, in consultation with the Chairman of the Committee and following consultation with all members of the Committee, to finalise for publication the Committee's Annual Report for 2008/09.

9/09 **PARISH COUNCILS' REPRESENTATIVES REPORT**

Mr Hodgetts advised that no meeting of the Bromsgrove Area Committee of the Worcestershire County Association of Local Councils had taken place since the last meeting of the Standards Committee. The next meeting of the Area Committee was due to be held on 3rd June, at which nominations for the Parish Councils' Representatives on the Standards Committee would be considered.

RESOLVED that the position be noted.

10/09 **REVIEW OF THE LOCAL ASSESSMENT REGIME**

Further to Minute 59/08 of the 31st March 2009 meeting of the Committee, a report was received on the findings of the review undertaken by officers on aspects of the local assessment of complaints about Members regime. The Deputy Monitoring Officer provided an overview of the key aspects of the report and the following were noted/agreed:

- (i) Publicity to and promotion of the ethical framework and complaints process

Members were advised of the various methods which were to be used in publicising and promoting the ethical framework and standards regime. A new "brand" was to be developed for use in all publicity, literature, information etc., which it was anticipated would be implemented in September 2009, following the Council's adoption of the new members' Code of Conduct. The primary aim of the new branding was to portray the positive benefits of the framework, in a language that was not legalistic and which would therefore be easily understandable to the public. The introduction of the new branding would coincide with the launch of the Council's new website and it was proposed that there a high profile press release, or series of releases, to promote the standards regime. Regular updates on progress in this regard would be given in future Monitoring Officer Reports.

(ii) Assessment criteria

The Deputy Monitoring Officer advised that an immediate change was required to the Standards Assessment Sub-Committee Assessment Criteria form to specify whether, at the time of the alleged breach of the Code of Conduct, the subject member was acting in either a personal or official capacity. Such a change was necessary as, save for conduct which constituted a criminal offence and which had resulted in a conviction, the Code currently only applied to Members acting in an official capacity. It was noted however that this issue might need to be revisited following the introduction of the new Code of Conduct, and that the form was an ever evolving document which was under constant review.

(iii) Notification of complaint to subject member prior to assessment

Members noted the legal advice detailed in the report as to whether or not a subject member should be notified of a complaint prior to the complaint having been assessed: in particular, the prohibitions in place under s63 of the Local Government Act 2000 on the disclosure of any information obtained by a monitoring officer in the course of performing any of his or her duties relating to complaints about members, except in specified circumstances. Were the Committee to decide that it intended to notify the subject member of a complaint prior to assessment, the only information which could be given to the subject member at that stage was the fact that a complaint had been made, the name of the complainant (subject to Data Protection and any request by the complainant for confidentiality) and the relevant paragraph(s) of the Code which may have been breached. A written summary of the actual allegation could only be provided once the Assessment Sub-Committee had met to consider the complaint.

Members agreed that there was little point in making such a notification to the subject member prior to assessment, particularly as no details as to the nature of the complaint could be given. As such, it was agreed that the existing practice of notifying the subject member once an initial assessment decision had been made should continue, and that the position be kept under review, particularly should any changes be made to the Standards Board's guidance on this.

(iv) Decision notices

It was noted that the content and format of the template decision notices/letters were to be reviewed, together with the separate decision notices required under Regulations 8 and 11 of The Standards Committee (England) regulations 2008, and that proposals in this regard would be brought back to the Committee.

(v) Review of assessment decisions

Members considered the two separate schools of thought detailed in the report as to what constituted a review of an assessment decision, namely: whether a review should be a re-hearing of the assessment hearing by a

different group of members, based on the same information given to the initial Assessment Sub-Committee; or whether this should be a review of the soundness of the decision-making process followed by the Assessment Sub-Committee. Although the Standards Board advocated the initial of these approaches, officers had been advised by specialist solicitors that this was not the correct approach, and that if the review hearing was effectively an assessment hearing then theoretically it should also be capable of being subject to review.

On balance, members agreed that the re-hearing approach was the most appropriate as from a public perception six different members of the Committee would have considered the matter, with there also being the ability for the Review Sub-Committee to reach a different conclusion should this be deemed appropriate.

(vi) Parish Councils publicity and promotion of the standards regime and complaints process

The Deputy Monitoring Officer advised that she would be liaising separately with the Parish Councils' Representatives on this matter and it was agreed that an item in this regard should be placed on the agendas of the Parish Councils' Forum and/or the Bromsgrove Area Committee of the Worcestershire County Association of Local Councils ("WCALC"), as appropriate.

(vii) Parish Councils - notification of complaints

The Deputy Monitoring Officer advised that she would also be liaising separately with the Parish Councils' Representatives on this matter, again with a view to placing an item on the agenda for the relevant meeting of the Parish Forum and/or WCALC. Members felt that it would be useful for parish clerks to have an agreed procedure to follow when receiving notification of a complaint about one of their Members, as this would assist in avoiding any difficulty or embarrassment a clerk might face when publicising a complaint.

(viii) Composition of the Standards Committee

As the Committee had yet to undertake a final determination of a complaint which it had assessed, it was felt inappropriate to make any recommendations to the Council regarding whether the same members should be able to sit on both the Assessment Sub-Committee and Final Determination Sub-Committee and, equally, whether the size of the Standards Committee should be increased. It was agreed however that the position should be reviewed once members had gained sufficient experience of final determinations.

Regarding whether a Cabinet member should sit on the Standards Committee, members felt that as the local assessment regime was still in its infancy, and as the Committee was currently determining whether the processes in place were working, it was again inappropriate at that stage to consider such changes, and felt that the position should be reviewed in 12 months time when looking at the other issues relating to the composition of the Committee.

Furthermore, as discussed earlier in the agenda (Minute 08/09 (vi) above refers), the issue of the Committee's links with senior Council officers and politicians, which had arisen as part of the leadership questions contained in the Standards Board's Annual Return, was to be considered separately at the next meeting of the Committee.

In relation to the suggestion that the Parish Councils' Representatives on the Committee be required to have been elected, as opposed to having been co-opted, it was the Committee's view that the parishes needed to have confidence in the representatives whom they nominated to sit on the Committee and that it was therefore for the parishes, via the Area Committee of the WCALC, to raise any concerns in this regard.

A separate issue raised under this heading was whether there should be a limit as to the number of members of the Standards Committee who also served on the Council's Planning Committee. This followed a recent hearing of the Standards Assessment Sub-Committee which the majority of district councillors on the Standards Committee had been precluded from participating in as the complaints in question related to a particular meeting of the Planning Committee, in which the district councillors had had an interest. The Committee noted that this issue could apply equally to other Council committees and that there was a mechanism in place for district councillors on the Standards Committee to be substituted by another district councillor in such circumstances. The Monitoring Officer stated that the only issue which had arisen in this regard was the appropriate method by which to appoint a substitute, and whether the substitute needed to come from a particular political group, and she advised that it would be helpful for her to have a clear procedure to follow should the same situation arise in the future. It was agreed therefore that a report on this be brought to the next meeting of the Committee.

RESOLVED:

- (a) that the assessment criteria at Appendix 1 be amended to include a question as to whether, at the time of the alleged breach of the Code of Conduct, the subject member was acting in either a personal or official capacity;
- (b) that a subject member should not be notified of a complaint before assessment;
- (c) that a review hearing should be a re-hearing of the complaint and not a review of the soundness of the decision-making process followed by the Assessment Sub-Committee;
- (d) that no recommendations be made to Council at this stage regarding the composition of the Standards Committee and that the position be reviewed in 12 months time; and
- (e) that a report on the mechanism for appointing district councillor substitutes on the Standards Committee and its Sub-Committees be brought to the next meeting of the Committee.

11/09 **REVIEW OF OPERATION OF THE COMMITTEE**

The Committee was asked to give consideration to the general operation of the Committee over the preceding twelve months and to comment on any aspects of this as appropriate. Officers advised that this would be an annual report from hereon, the aim of which was to give members an opportunity to raise any issues of relevance or concern, and that this would usually be programmed for the last meeting of the municipal year, prior to any change in membership following the Annual Meeting of the Council.

Members felt that the Committee had operated in a very positive manner and it was noted that the Committee was currently undertaking a major review of the local assessment of complaints about Members regime, which had now been in operation for twelve months.

RESOLVED that the position be noted.

12/09 **WORK PROGRAMME**

Consideration was given to the Committee's Work Programme.

It was noted that no items were currently scheduled for consideration at the July 2009 meeting. Officers advised that the date of the next meeting would depend on when the new Code of Conduct was issued.

RESOLVED that the Work Programme be approved.

13/09 **LOCAL GOVERNMENT ACT 1972**

RESOLVED:

a) that under Section 100 I of the Local Government Act 1972, as amended, the public be excluded from the meeting during the consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended, the relevant paragraphs of that part being as set out below, and that it was in the public interest to do so:

<u>Item No.</u>	<u>Paragraph(s)</u>
15 & 16	1, 2, 3 & 7A; and

b) that under Section 100 A of the Local Government Act 1972, as amended, the public be excluded from the meeting during the consideration of the following items of business on the grounds that they involve the likely disclosure of confidential information, namely information provided under Section 63 of the Local Government Act as part of an Ethical Standards Officer's investigation under Part III of the Local Government Act 2000:

<u>Item No.</u>
15 & 16."

14/09 **CONFIDENTIAL MINUTES**

The confidential minutes of the meeting of the Standards Committee held on 31st March 2009 were submitted.

RESOLVED that the minutes be approved as a correct record.

15/09 **STANDARDS BOARD FOR ENGLAND FINAL REPORTS ON ALLEGED BREACHES OF THE BROMSGROVE DISTRICT COUNCIL CODE OF CONDUCT**

Further to Minute 07/09 above, the Committee received, for information only, the final reports of the Standards Board for England's Ethical Standards Officer on the outcomes of the investigations into three separate allegations that Councillor Peter McDonald had breached the Bromsgrove District Council Code of Conduct. In each of the cases the Ethical Standards Officer had made a finding that Councillor McDonald had not failed to comply with the Code.

The Committee noted that it was bound by the Investigating Officer's findings and that it had no powers to either investigate or make its own findings on the cases. The Assessment Sub-Committee needed to give careful consideration when referring possible breaches of the Code to the Standards Board for investigation, rather than to the Monitoring Officer for local investigation, and it was noted that the Monitoring Officer could appoint an independent external investigating officer should the particular circumstances warrant this.

RESOLVED that the Standards Board for England's Ethical Standards Officer's findings of no breach in relation to the three separate allegations against Councillor McDonald be noted.

The meeting closed at 7.08 p.m.

Chairman

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BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

22ND JULY 2009

MONITORING OFFICER'S REPORT

Responsible Portfolio Holder	Councillor Geoff Denaro
Responsible Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Non-Key Decision	

1. SUMMARY

- 1.1 The Standards Committee has requested the Monitoring Officer to report to each meeting of the Standards Committee on a number of items, and this report sets out the latest position in relation to those items.
- 1.2 Any further updates will be reported on orally at the meeting.

2. RECOMMENDATION

Members are requested to:

- 2.1 note the report and to comment on any aspects of this as appropriate;
- 2.2 decide whether provisional dates for meetings of the Standards Assessment Sub-Committee should be established from hereon (paragraph 3.4 below refers); and
- 2.3 approve the proposal contained in paragraph 3.10 of the report, namely that the recommendation of either the Appointments Committee or the Monitoring Officer on the appointment of a new Independent Member on the Standards Committee be referred to the 18th November 2009 meeting of full Council for consideration.

3. BACKGROUND

Member Investigations and Associated Matters

- 3.1 The investigation into the complaint referred to the Monitoring Officer for local investigation has now been completed and the Investigating Officer's draft report will shortly be forwarded to the relevant parties for comment. Once the period for comments has elapsed the report will be finalised and referred to the Standards Committee for consideration, at which point the Committee will be required to make one of the following findings:

- (i) that it accepts the Investigating Officer's finding of no failure ("a finding of acceptance"); or
- (ii) that the matter should be considered at a hearing of the Standards Committee conducted under Regulation 18 of The Standards Committee (England) Regulations 2008; or
- (iii) that the matter should be referred to the Adjudication Panel for England for determination.

Complaints for Local Assessment

- 3.2 No meetings of the Standards Assessment Sub-Committee have taken place since the last meeting of the Standards Committee. As previously agreed, members of the Standards Committee will be informed of any complaints once the Assessment Sub-Committee has met to consider these and the subject Member has been notified of the Sub-Committee's decision.
- 3.3 A table showing the cumulative totals for local assessment at the time of preparation of this report is appended which, as previously requested by the Committee, also includes details as to the nature of the complaints received. It should be noted that only those complaints which have been through the initial assessment stage are included in the figures as the existence of any complaints would not be made known prior to that stage.

Assessment Sub-Committee meeting dates

- 3.4 Provisional Assessment Sub-Committee meeting dates have previously been scheduled for every third week (with any such dates remaining confidential) in the event it has proved necessary for a meeting to take place. Members of the Standards Committee are then notified nearer to a proposed date as to whether or not a meeting is required. This arrangement was particularly useful in the early months following the introduction of local assessment when a number of complaints were received. Some meetings have however taken place on other (unscheduled) dates, depending on issues such as the availability of Committee members, proximity of complaints received in comparison to pre-existing dates and any other relevant factors/timeframes involved. The Committee is asked to consider whether it still wishes for meetings to be arranged on this basis or whether officers should, in future, establish meeting dates on an 'as and when required' basis only.
- 3.5 **Review of the Local Assessment regime**
Officers will provide an oral update at the meeting on any progress made with the ongoing review of the local assessment regime.

Member Training

- 3.6 Members are advised of the following training matters:
 - (i) sessions conducted by Peter Keith-Lucas of Bevan Brittan Solicitors on Probity in Planning and a Mock Planning Committee Meeting took place on 21st May and 17th June 2009 respectively. The sessions were very successful with a number of learning points having been identified, which are now being fed into the planning review which is

- being undertaken as a consequence of the recent Standards Committee recommendation to full Council;
- (ii) equality and diversity training has been identified which will involve a session on 'LGB & T' (lesbian, gay, bisexual and transgender) issues in quarter 3 (October to December 2009) and disability training in quarter 4 (January to March 2010);
 - (iii) the Member Development Steering Group is considering a training session on climate change which will be delivered in quarter 3;
 - (iv) on 10th June 2009, and in accordance with the Council's Constitution, Councillor Mrs. Doyle completed the necessary standards/Code of Conduct training required in order for her to sit on the Standards Committee;
 - (v) training on the new Members' Code of Conduct will be scheduled once the Model Code and accompanying guidance has been published and the new Code has been adopted by the Council (see further details at paragraph 3.7 below.); and
 - (vi) details regarding training for the parish councils as part of the new ethical governance training programme can be found at paragraph 3.8 below.

3.7 New Code of Conduct

It is not known at this stage when the new Code is to be published. Officers have been led to understand that the Department of Communities and Local Government is currently drafting a government response to the consultation exercise, which will be published in due course. The parliamentary draftsmen will be instructed to prepare a draft statutory instrument which will have the new Code appended to it, and on which there is likely to be a short (possibly 6 weeks) consultation period for relevant bodies to make comments. As such, a new Code is not now likely to be published until about October. Councils may then have 6 months by which to sign up to the new Code, following which Members will have to sign a new Acceptance to abide by the Code, although they are unlikely to be asked to complete a new Register of Interests form.

3.8 Parish Council matters

(i) Ethical governance training programme

Notwithstanding the delay in publication of the new Code of Conduct it is anticipated that training for the parish councils, as part of the new ethical governance training programme, will commence in the autumn of 2009. Following consultation with the parishes, the key areas which have been identified as being of particular interest/relevance are:

- personal and prejudicial interests – including the Register of Members' Interests;
- 'dual-hatted' Members (i.e. those who serve on more than one relevant authority and other public bodies); and
- bias and predetermination.

Appropriate training will also be included on the new Code of Conduct and possibly equality and diversity issues.

(ii) Appointment of Parish Councils' Representatives to the Standards Committee

Following the meeting of the Bromsgrove Area Committee of the Worcestershire County Association of Local Councils which took place on 3rd June 2009, confirmation was received that Mr. Cypher, Mr. Hodgetts and Mr. Malek had been re-nominated to continue in their current roles on the Committee - for the extended period of 2 years, effective from July 2009. These nominations will be considered at the next meeting of full Council on 29th July, following which formal appointments will be made.

3.9 Annual Report of the Standards Committee 2008/09

All members of the Committee have commented on the draft Annual Report for 2008/09 and at the time of preparing this report the Council's Graphics Technician was in the process of formatting the Annual Report. Once formatted, a final draft of the Report will be sent to the Chairman for approval. Should the Report be finalised and printed by 22nd July copies of this will be circulated at the meeting. All district councillors will be sent a copy of the final Report, together with parish council chairmen/clerks. Copies will also be made available at all public libraries within the district, at the Customer Service Centre at the Dolphin Centre and at the Council House Reception. The Report will also be available on the Council's website.

3.10 Appointment of new Independent Member to the Standards Committee

Mrs. Trigg's second term of office on the Committee expires on 20th October 2009. A new Independent Member will therefore need to be appointed to the Committee whose term of office will be 4 years and who may seek to be reappointed only once. The process for the recruitment of Independent Members to the Committee was considered by the Standards Committee on 12th June 2008 and approved by full Council on 16th July 2008. In brief, the process will involve:

- (i) an advertisement detailing the vacancy being placed in the local press;
- (ii) the Monitoring Officer, in consultation with the Chairman or Vice-Chairman of the Committee, undertaking the shortlisting of candidates;
- (iii) in the event two or more candidates are shortlisted, interviews will take place with the Council's Appointments Committee, which will involve the assistance of the Chairman or Vice-Chairman of the Standards Committee who shall act in an advisory (but non-voting) capacity; and
- (iv) a recommendation on appointment being made to full Council.

Should only one suitable candidate be shortlisted then the Monitoring Officer will make a recommendation direct to full Council for that candidate to be appointed.

As we are currently approaching the summer holidays, and in order to obtain the best possible field of candidates for the vacancy, it is proposed that the timetable for the appointments process be based on a final recommendation being made to the meeting of full Council on 18th

November 2009. Although this will leave a period of approximately one month whereby the Standards Committee will have only 2 Independent Members it is not envisaged that this will cause any particular difficulties. The Committee is therefore asked to approve the proposed timetable. An item will also appear on the agenda for the Committee's September meeting on the appointment of a new Vice-Chairman of the Committee, effective from 21st October 2009; the expiry of Mrs. Trigg's second term of office.

4. FINANCIAL IMPLICATIONS

None

5. LEGAL IMPLICATIONS

The Local Government Act 2000 introduced primary legislation which set out the basis for the current ethical governance regime and to enable the implementation of a Members' Code of Conduct. This was amended by the Local Government and Public Involvement in Health Act (LGPIHA) 2007 insofar as it related to the application of the Members' Code of Conduct to their private lives. Further details have been provided by the Local Authorities (Model Code of Conduct) Order 2007 and the Relevant Authorities (General Principles) Order 2001. The local assessment regime was introduced by the LGPIHA 2007, and further expanded in the Standards Committee (England) Regulations 2008 which also set out the rules and procedures governing the investigation and determination of complaints.

6. COUNCIL OBJECTIVES

This item does not link directly with any Council objectives.

7. RISK MANAGEMENT

7.1 The main risks associated with the details included in this report are:

- Risk of challenge to Council decisions; and
- Risk of complaints about elected members.

7.2 These risks are being managed as follows:

- Risk Register: Legal, Equalities and Democratic Services
Key Objective Ref No: 3
Key Objective: Effective ethical governance

8. CUSTOMER IMPLICATIONS

None

9. EQUALITIES AND DIVERSITY IMPLICATIONS

None

10. VALUE FOR MONEY IMPLICATIONS

None

11. OTHER IMPLICATIONS

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	None
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No
Chief Executive	No
Executive Director - Partnerships and Projects	No
Executive Director - Services	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

13. WARDS AFFECTED

All wards

14. APPENDIX

Local Assessment Statistics.

15. BACKGROUND PAPERS

- (i) Appointment of Independent Members report to 12th June 2008 Standards Committee;
- (ii) Minutes of the meeting of the Standards Committee held on 12th June 2008;
- (iii) Appointment of Independent Members report to 16th July 2008 full Council; and
- (iv) Minutes of the meeting of full Council held on 16th July 2008.

CONTACT OFFICERS

Name: Claire Felton
Monitoring Officer
Email: c.felton@bromsgrove.gov.uk
Tel: (01527) 881429

Debbie Warren
Deputy Monitoring Officer
d.warren@bromsgrove.gov.uk
(01527) 881609

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Local Assessment Statistics

Period ¹	Number of complaints assessed	Reviews conducted	No further action	Referred for other action	Referred for local investigation	Referred to Standards Board for investigation	... and accepted by the Standards Board	Standards Board outcome	Final determinations
Total	15 ²	0	8	1 [action duly completed by Member]	1 [Investigating Officer's report currently awaited]	5	5	5 [all findings of no breach]	0

Nature of complaints	Number of complaints
Register of Members' Interests (failure to declare in full/failure to complete and return within required 28 days of adoption of the Code of Conduct)	2
Failure to treat others with respect	1
Acted in a manner which brought office/the Council into disrepute	4
Bullying/intimidation of Council officers	2
Combined: brought office into disrepute/improper use of position/prevention of access to information to which a person is entitled by law	1
General inappropriate behaviour (relating to actions at a meeting of the Council's Planning Committee)	5

¹ - The statistics detailed cover the period since the introduction of local assessment in May 2008 to 14 July 2009 (the date of preparation of this report).
² - In 1 case the Monitoring Officer's discretion under Regulation 16(1)(a)(ii) of the Standards Committee (England) Regulations 2008 was used to refer the matter back to the Assessment Sub-Committee for reconsideration.

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BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

22ND JULY 2009

STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009

Responsible Portfolio Holder	Councillor Geoff Denaro
Responsible Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Non-Key Decision	

1. SUMMARY

The Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255) came into force on 15th June 2009. These:

- make provision for the Standards Board for England (“SBE”) to suspend the functions of a local Standards Committee where the Committee is failing to perform its functions satisfactorily;
- give authorities a power to establish Joint Standards Committees; and
- extend the power of Standards Committees to give Members dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest.

2. RECOMMENDATION

- 2.1 That the Monitoring Officer advises all Members and parish councils of the new grounds for application for dispensation in respect of prejudicial interests.
- 2.2 That the Monitoring Officer prepares a draft procedure for processing applications for dispensations for future consideration by the Committee.

3. BACKGROUND

Suspension of Standards Committee Functions

- 3.1 The function of initial assessment of complaints of breaches of the Code of Conduct by Members was transferred from the Standards Board to Assessment Sub-Committees of local authorities from 8th May 2008. The Regulations now give a power for the SBE to intervene in an individual authority:

3.1.1 if the SBE is of the view that the authority’s Standards Committee has failed:

- to have regard to SBE guidance;
- to comply with a direction from SBE;

- to carry out its functions within a reasonable time or in a reasonable manner; or
 - 3.1.2 if the SBE is of the view that the authority's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner; or
 - 3.1.3 the authority or its Standards Committee has requested the SBE to intervene.
- 3.2 Where the SBE considers intervention, it must give the authority notice of its intentions and reasons and give the authority at least 28 days to respond before making a direction. The effect of a direction is to transfer the initial assessment function to either the SBE itself, or to the Standards Committee of another named authority ("the substitute authority"). In practice, the preferred route is likely to be to transfer the function to a substitute authority, but that is likely to be dependent on the two authorities reaching agreement on costs.
- 3.3 During the period of the intervention, the SBE, or the Standards Committee of the substitute authority, would undertake the initial assessment and review in exactly the same manner as the original authority, and can decide to refer the allegation for a local or a SBE investigation, alternative action or no action, as appropriate. The intervention is strictly in respect of the initial assessment function, so the regulations give a discretion to the SBE to use their own investigators and the Adjudication Panel for hearings (or the substitute authority to use its own Monitoring Officer and Hearings Sub-Committee) or to use the Monitoring Officer and/or the Monitoring Officer and/or Hearings Sub-Committee of the original authority if that is appropriate.
- 3.4 An intervention can be terminated by the Standards Board at any time. Guidance is due to be issued by the SBE shortly on interventions.
- 3.5 Members are requested to note these new powers.
- Joint Standards Committees**
- 3.6 The Regulations give a discretion for two or more local authorities to set up a Joint Standards Committee which can be established:
- to discharge all of each participating authority's standards functions, or
 - to discharge just some of the authorities' standards functions, so that each authority retains its own Standards Committee to discharge those standards functions which have not been allocated to the Joint Committee.
- 3.7 Accordingly, authorities might agree to establish a Joint Standards Committee which would establish a Referrals and a Review Sub-Committee, but each retain their own Standards Committees to discharge the functions of conducting hearings, providing Member training and

promoting high standards of conduct. Alternatively, where all standards functions are allocated to the joint Standards Committee, then participating authorities would no longer maintain their own separate Standards Committees. Where a function is allocated to the Joint Standards Committee, it cannot then be discharged by the Standards Committee of an individual participating authority. Guidance has been issued by the SBE on the setting up of Joint Standards Committees which can be found at Appendix 1.

- 3.8 Members are requested simply to note this power to set up a Joint Standards Committee at this stage and to bear it in mind in the context of the current consideration of shared services.

Dispensations

- 3.9 The original 2002 Dispensations Regulations provided that a Member who had a prejudicial interest in a matter which was coming before the authority could apply to the Standards Committee for a dispensation, and that the Standards Committee could give a dispensation to allow the Member to speak and to vote on the matter at meetings. Those regulations specified two grounds for dispensation:

- that the business of the authority would be impeded because more than 50% of the Members of the decision-making body (Council, Committee, Sub-Committee or Cabinet) would otherwise be prohibited from voting on the matter; or
- because of the prejudicial interests of Members, the authority would be impeded because it would not be able to comply with its duty to allocate seats on Committees or Sub-Committees to different political groups in accordance with the principles of political balance.

- 3.10 It has been widely acknowledged that the regulations were meaningless in respect of the second ground. In practice, the proportionality rules apply only to the process of appointment of Committees and Sub-Committees, and not to attendance at individual meetings, so this ground was ineffective.

- 3.11 The new Regulations repeat the first ground and now re-state the second ground to apply where the business of the authority will be impeded because the absence of Members as a consequence of prejudicial interests would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting.

- 3.12 The SBE has issued new guidance on the granting of dispensations which is attached as Appendix 2. This recommends that Standards Committees develop criteria to be applied to requests for dispensations. Suggestions are included on pages 5 and 6 of the guidance, but officers propose that this Committee produces its own guidance which should be made available to Members (of both the District Council and of the parish councils in the district) on the process for applying for a dispensation and the criteria which will be applied as none is currently in existence. A draft will be prepared

and brought to Committee for consideration in due course. In the meantime it is suggested that the Monitoring Officer ensure that these new Regulations are brought to Members' and parish councils' attention.

4. FINANCIAL IMPLICATIONS

None

5. LEGAL IMPLICATIONS

The Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255), the key provisions of which are described above.

6. COUNCIL OBJECTIVES

Not applicable

7. RISK MANAGEMENT

There are no risks associated with this report.

8. EQUALITIES AND DIVERSITY IMPLICATIONS

None

9. VALUE FOR MONEY IMPLICATIONS

None

10. OTHER IMPLICATIONS

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	None
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

11. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No
------------------	----

Chief Executive	No
Executive Director - Partnerships and Projects	No
Executive Director - Services	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

12. WARDS AFFECTED

All Wards

13. APPENDICES

Appendix 1 - SBE Guidance on Joint Standards Committees
Appendix 2 - SBE Guidance on Dispensations

14. BACKGROUND PAPERS

None

CONTACT OFFICER

Name: Debbie Warren,
Deputy Monitoring Officer
E Mail: d.warren@bromsgrove.gov.uk
Tel: (01527) 881609

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JOINT STANDARDS COMMITTEES GUIDANCE

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introduction

This guidance on the establishment of joint standards committees reflects the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations). The regulations which enable authorities to establish joint standards committees are not mandatory.

The guidance is aimed primarily at members of standards committees and monitoring officers but will also provide a useful reference tool for all members and officers.

It applies to:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- integrated transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Members of parish and town councils may also find this guide useful.

The Local Government Act 2000 says that your authority must set up a standards committee. The Standards Committee (England) Regulations 2008 set out the rules governing the size and composition of a standards committee and should be read alongside this guidance.

Throughout this guidance we use the term

‘independent member’ to describe members appointed by the authority under Section 53(4)(b) of the Local Government Act 2000, and Regulation 5 of the Standards Committee (England) Regulations 2008.

You may also like to consult our *The role and make-up of standards committees* and *The local assessment of complaints* guidance.

Why might a joint standards committee be a good idea?

The regulations enable joint standards committees to carry out any of the functions of a standards committee granted to them by or under Part III of the Local Government Act 2000 or Part 1 of the Local Government and Housing Act 1989.

Joint arrangements are likely to be most useful where additional flexibility to deal with cases is needed, or where resources are limited and sharing them would benefit the successful management of the standards framework in that area.

Potential benefits of forming a joint standards committee

We have identified a number of potential benefits of forming a joint standards committee. In addition, they may have some bearing on the type of joint working structure adopted. These are:

- avoidance of conflicts of interest through a wider pool of members
- consistency of procedures
- public confidence in the complaints process enhanced through a greater

introduction

'distance' between standards committees and complainants/subject members

- greater capacity to meet the increased role and workload of standards committees under the local standards framework
- efficient and effective use of resources through sharing of resources and pooling expertise
- increased ability to promote high ethical standards through a raised profile of the standards committee
- the ability to jointly commission and fund mediation, training and investigations
- the opportunity to create stronger support and advisory functions

Note: These are just some of the potential benefits and we acknowledge that some authorities may have their own reasons for forming a joint standards committee that are specific to their own circumstances and requirements.

Potential problems/issues

We have also identified a number of potential problems or issues with joint arrangements, which we think are important to consider in conjunction with the benefits listed above:

- the possibility that it could become an overly bureaucratic and more complex process, leading to a lack of clarity for the general public
- member resistance to joint standards committees
- differing resource implications for authorities within the same joint

working arrangement

- loss of local ownership of standards and ethical issues

The standards framework became fully localised on 8 May 2008. This reflected a general desire – which was supported by the Standards Board – among those in the field to be able to manage their own complaints. The local standards framework also recognised that a knowledge of the local area and local situation can have a positive impact on finding the right solutions.

Model Structures

We understand that authorities will each have different reasons for wanting or needing a joint standards committee. As a result, we have identified three model structures for joint standards committees which we think offer the most practical ways of operating joint arrangements.

The model structures are:

Model A

A joint standards committee to receive written allegations and requests for a review, and to decide what action to take in relation to them.

The defining feature of this model is that authorities will be able to retain their own standards committee. Furthermore, aside from receiving and assessing allegations and reviews, the authority's own standards committee will perform all other functions independently.

An advantage of this model structure is that it will help reduce the likelihood of standards committee members being

introduction

conflicted out of a stage of the complaints process. The regulations state that standards committee members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision. Forming a joint standards committee will increase the number of standards committee members, and so reduce the chance of conflicts of interests occurring.

This model also allows standards committees to share resources when assessing allegations, yet at the same time allows them to retain ownership of all other functions, including the hearing and determination processes. This will ensure that individual standards committees are applying sanctions based on their own local knowledge and are taking responsibility for implementing standards in their own local authorities.

Model B

A joint standards committee to carry out the functions in Model A along with receiving and considering final investigation reports and conducting hearings, making findings and imposing sanctions.

This model is an extension of Model A and will therefore also help to reduce the likelihood of standards committee members being conflicted out of a stage of the complaints process for the same reason. In addition, Model B offers an increased opportunity to reduce costs through holding joint hearings.

However, when considering whether to adopt such a structure, authorities should bear in mind that the ability to draw on

local knowledge when applying sanctions may be diminished. This potential lack of local knowledge becomes more important at this stage, given that much more information is available to the standards committee once an investigation has been conducted.

Model C

A joint standards committee to carry out all of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 and Part 1 of the Local Government and Housing Act 1989.

Model C is most appropriate for single purpose authorities such as police or fire authorities. These authorities usually have less contact with the public than local authorities and are the source of fewer complaints, so they tend to need to meet less frequently to exercise their specific complaint-handling functions. A joint working arrangement could therefore be a more sensible use of resources.

Establishing a joint standards committee in such situations should not lead to a weakening of the local standards framework in individual authorities. The same high levels of input expected of a single standards committee should also be applied to ensure that a culture of high standards is still developed within each participating authority.

We do not generally recommend that local authorities adopt Model C because it remains an important role of an authority's standards committee to promote and maintain high standards within its own authority.

Composition of joint standards committees

The general rule is that a joint standards committee is composed in the same way as an ordinary standards committee but with the changes necessary to reflect the fact that it is a joint committee.

It must include at least one elected member of each authority involved in the joint arrangement.

At least 25% of the members of the joint standards committee must be independent members.

At least three people must attend any joint standards committee meeting.

The chair of the joint standards committee must always be an independent member. Therefore, you may also want to appoint an independent member to act as vice chair of the committee in case the chair is unable to attend.

If any of your authorities has executive arrangements, you are permitted to have one executive member on the joint standards committee. The authorities involved in the joint arrangement will decide which authority that member comes from. However, the executive member must not be the elected mayor or leader.

If your joint standards committee is responsible for any parish or town councils, at least two representatives from those parish or town councils covered by the authorities involved in the joint arrangement must be appointed to your standards committee. They cannot also be members of any of the authorities involved in the joint arrangement.

A parish or town council representative must be present on the standards committee at all times when parish matters are being discussed.

There is no limit to the number of independent members you can have on your joint standards committee

You will need to decide how to select independent members and how long an independent member should sit on the joint standards committee for. These arrangements will need to be set out in the terms of reference of the joint standards committee.

We recommend that you set a fixed period of four years. This will be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that they could be perceived as losing their independence.

When reappointing an independent member, you should bear in mind that we recommend that independent members should serve no longer than two terms, which is a maximum of eight years. It may be helpful for independent members to be appointed for differing lengths of time so that the experience they gain is not all lost simultaneously. The usual rules apply about advertising and appointing if you wish to reappoint an independent member.

Choosing an independent member

The arrangements for appointing independent members under a joint arrangement will be decided by the authorities involved in that arrangement and will be set out in its terms of reference.

Composition of joint standards committees

Authorities have two choices. Each authority can appoint its own independent members or the authorities involved in the joint arrangement can appoint independent members jointly.

Where each authority appoints its own independent members, the requirements of paragraph 5(1) of the Standards Committee (England) Regulations 2008 apply. This means:

- the vacancy must be advertised in a local newspaper and such other publications as the authority deems appropriate
- the person must have submitted an application to the authority
- the person's appointment must be approved by the majority of the members of the authority

If an authority's standards committee has any independent members, it can appoint them to be independent members of a joint standards committee. The Standards Board believes that the regulations do not require the authority to comply with the requirements of paragraph 5(1) again for its existing independent members in order to appoint them to a joint standards committee.

An authority may not have any independent members to appoint to the joint standards committee if it is setting up a committee as set out in Model C (see page 4) and therefore is not also operating its own standards committee.

Where the authorities appoint jointly:

- the appointment must be approved by each authority
- the vacancy must be advertised in a

newspaper local to each authority area and in such other publications as each authority deems appropriate

- the person must have submitted a joint application, sent to the lead authority

Where more than a couple of authorities are involved in a joint arrangement it is likely that it will take some time for the authorities to each approve the appointment of the independent members.

Similarly coordinating the advertisement for the vacancy or vacancies in more than one local newspaper may take time. Formal and evidenced arrangements would need to be made for one authority to act on behalf of all the others involved in the joint arrangement. This is in order to accept application forms from candidates – otherwise any applicant would need to submit a separate form to each authority. This application, managed by the lead authority, would need to make it clear that it is to all of the authorities involved in the joint arrangement, and those authorities should be named on the form. The lead authority should then send a copy of the application to the other authorities.

Given the practical difficulties of joint appointments, we recommend that each authority arrange to appoint its own independent members. We also recommend this because there is some uncertainty in the legislation over the process for independent members appointed jointly on whether they should sign an undertaking to be bound by a code of conduct.

Whatever arrangements are used, the following factors need to be taken into account:

Composition of joint standards committees

- 1) A person can only be an independent member if that person:
 - has not been a member or employee of any of the authorities involved in the joint arrangement within the five years before the date of appointment
 - is not a member or officer of any relevant authority
 - is not a relative or close friend of a member or employee of any of the authorities involved in the joint arrangement
- 2) The regulations say that a 'relative' means:
 - a partner (a spouse, civil partner or someone a person lives with in a similar capacity)
 - a parent
 - a parent of a partner
 - a son or daughter
 - a stepson or stepdaughter
 - the child of a partner
 - a brother or sister
 - a brother or sister of a partner
 - a grandparent
 - a grandchild
 - an uncle or aunt
 - a nephew or niece
 - the partners of any of the people mentioned above

The regulations do not provide a specific definition of a close friend. Please refer to our publication the *Case Review 2007*, which includes a section on defining a close associate. This might be helpful in identifying a close friend. The *Case Review 2007* is available on our website.

Ceasing to be an independent member

Under the regulations, either of the following will no longer be able to be an independent member of the joint standards committee:

- any person appointed as an independent member who becomes a member or officer of an authority
- any person appointed as an independent member who becomes a relative of a member or officer of any of the authorities involved in the joint arrangement

Remuneration for members of a joint standards committee

Authorities in a joint arrangement will need to ensure that their joint arrangement specifies what provisions, if any, are to be made for the payment of allowances to members of the joint standards committee.

Indemnities for independent members

Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements under the Local Authorities (Indemnities for Member and Officers) Order 2004. We recommend that any joint arrangement includes consideration of what indemnity arrangements should be in place for independent members.

Composition of joint standards committees

Complying with the Code of Conduct and the register of members' interests

Members of a joint standards committee must sign an undertaking to comply with the Code of Conduct of the authority that appointed them to that committee. They must also disclose their interests in the register of members' interests maintained by the monitoring officer of the authority that appointed them. Independent members must do so in the same way as other members.

Town and parish representatives

If your joint standards committee is responsible for parish or town councils we recommend you have a minimum of three parish or town council representatives on your standards committee, though the legal minimum is two.

Three parish or town council representatives will provide you with flexibility. It should allow the local assessment of complaints to be carried out if a parish or town council representative is unavailable or conflicted out.

Your council must consult parish and town councils within the area covered by the joint arrangement to help decide if there should be a parish sub-committee to deal with some of the joint standards committee's functions about parish and town councils.

Any parish sub-committee must include at least one parish or town council representative and at least one independent member. In addition, you must consult parish and town councils

within the area covered by the joint arrangement to determine how many parish and town council representatives are needed and how long they should serve on the sub-committee.

Choosing parish and town council representatives

The authorities involved in the joint arrangement must decide how to recruit and appoint parish or town council representatives. Your parish and town council representatives should have the trust of town and parish councils in the area covered by the joint arrangement, so you should involve them in the selection procedure.

Executive members on the joint standards committee

If the authorities are operating executive arrangements, the standards committee does not need to include any executive members. However, you should consider whether it is appropriate to appoint an executive member and, if so, how that member is to be chosen from among the authorities in the joint arrangement. There can only be one executive member on a joint standards committee, regardless of how many authorities are involved in the joint arrangement.

Appointing an executive member might show that the committee is supported and respected by all parts of the authorities. Not having an executive member could reflect a degree of independence from the political leadership of the authorities. This is ultimately a decision for the authority.

Composition of joint standards committees

Elected members on the joint standards committee

A joint standards committee does not need to reflect the political balance of the authorities involved in the arrangement. This is because the joint standards committee should be independent of party politics. Its members need to have the respect of all the members of the authorities. It may be helpful to remind elected members of this when committee appointments are being made.

In the same way that independent members need to be appointed by a majority of the authority, it would be useful for your joint committee to include members who are supported by all political parties. This is particularly when the local assessment of complaints is carried out. This is so that greater trust and confidence can be established in the decision-making process among all political members.

Standards committees should be seen as making judgments impartially and without regard to party loyalty. Elected members should consequently be mindful of this when serving on a standards committee and should not be told how to vote on matters. Members should also remember that they must adhere to the Code of Conduct when serving on a standards committee.

Note: Where police authorities are included in joint arrangements, any reference above to an elected member needs to be read as a reference to an authority member.

Substitute members

Some authorities operate a substitute system. This allows a substitute member to attend a meeting of the committee or sub-committee whenever a regularly appointed member cannot be present. However, we do not recommend the use of substitutes for joint standards committees.

In instances where all your independent members are unavailable, you would be able to substitute your independent members with independent members from another authority. You should also note that nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

Training

It is important when assessing complaints, reviewing assessment decisions and holding determination hearings that the sub-committee is properly constituted and that members are trained on the Code and the relevant legislation. We recommend that you keep a clear record of the training of all standards committee members. Some authorities provide refresher training before hearings.

operation of a joint standards committee

Paragraph 15(2)(a) and (b) require the terms of reference of a joint standards committee to include the functions and administrative arrangements under which the joint committee will operate.

Functions

The joint standards committee can carry out any of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 or Part 1 of the Local Government and Housing Act 1989. Some authorities have conferred other functions on standards committees under Section 54 of the act. These include:

- overview of the whistle blowing policy
- advising on the content of the authority's officer code of conduct
- overview of complaints handling and Ombudsman investigations
- oversight of the constitution

These functions may not be allocated to a joint standards committee as they are not granted by Part III of the Local Government Act 2000 or any regulations made under that Part. They therefore need to remain with the authority's standards committee, or be reallocated elsewhere.

If a joint standards committee exercises a certain function – that function cannot also be exercised by a standards committee of any of the authorities involved in the joint arrangement. Therefore, the authorities involved in a joint standards committee arrangement must **all** agree which of their functions they wish the joint standards committee to have.

An authority cannot assign functions to a joint standards committee only to deal with

particular complaints. For example, a complaint might be made about a dual-hatted member, or any member who belongs to more than one authority. In such cases, the authority cannot set up a joint assessment sub-committee with the other authority or authorities that the member belongs to but also continue to use its own assessment sub-committee for complaints about single-hatted members. The functions assigned to a joint standards committee are applicable for all complaints received by the authority.

Lead authority

In any joint standards committee arrangement there should be one authority with responsibility for making the administrative arrangements necessary for it to operate. This responsibility may rotate over time.

Sub-committees

Where a joint standards committee arrangement has been set up just to carry out initial assessments or initial assessments and reviews, it will be necessary to set up sub-committees to carry out those functions under regulation 6 of the Standards Committee (England) Regulations 2008. Membership of these sub-committees will need to be drawn from the joint standards committee.

Meetings

Meetings of the joint standards committee and its sub-committees should be arranged by the lead authority's monitoring officer in consultation with the monitoring officers of the other authorities involved in the joint arrangement.

operation of a joint standards committee

Any committee or sub-committees should have a minimum of three members. However, ensure you pay attention to the detailed requirements of paragraph 7(3) of the Standards Committee (England) Regulations 2008 as amended by paragraph 14(5)(e) of the Standards Committee (Further Provisions)(England) Regulations 2009.

A committee or sub-committee must have at least one elected member on it, where it is dealing with any of the following:

- making an initial assessment of a case
- reviewing an assessment
- considering what to do with a monitoring officer's report on an investigation
- holding a hearing

If the case concerns a parish member or former parish member then the committee or sub-committee must also have a parish representative present. The elected member and parish representative do not have to be from the same authority as the member whose case is being considered.

Preparation of agendas and minutes

The monitoring officer of the lead authority should prepare the agenda for meetings of a joint standards committee or its sub-committees. This can be done in consultation with the monitoring officers of the other authorities involved in the joint arrangement who would normally be expected to prepare reports about cases from their own authorities.

Any joint arrangements will need to clearly identify who will have responsibility for:

- notifying the parties of any decisions made
- for preparing the minutes of the meeting
- for preparing the summary of proceedings under regulation 8(5) of the Standards Committee (England) Regulations 2008
- the summary under Section 57C(2) of the Local Government Act 2000 to the member complained about

Ultimate responsibility for these tasks lies with the monitoring officer of the authority the subject member comes from. However, the monitoring officer of the lead authority could carry out those tasks on their behalf as long as the joint arrangements make this clear.

Standing orders/procedure rules

As with any other committee of a local authority, you will need rules to govern the way in which meetings are administered and conducted. See Appendix 2 of the model constitution, attached at the end of this document, which sets out a suggested format for those rules.

Financial arrangements

Any joint standards committee arrangements should be clear about how the financial expenses of the arrangements will be met. We recommend that the joint committee should have a budget which is held separately from that of the constituent authorities by the chief financial officer of the lead authority. We also recommend that the budget is

operation of a joint standards committee

managed by the lead authority's monitoring officer.

The basis on which the expenses are shared should be clearly set out in the joint standards committee's terms of reference. Much will depend on the functions carried out under the joint arrangement. For instance, where the joint standards committee has been set up to deal with initial assessment and review cases, the expenses might be shared based on the number of cases submitted for consideration by an authority as a proportion of the total cases considered. So an authority submitting 30 cases in a year from a total of 50 considered under the joint arrangement would pay 60% of the expenses incurred.

Any disagreement about the proportion of expenses that should be met by an authority involved in the joint arrangement must go to a single arbitrator agreed between the authorities. This is as required by paragraph 15(3) of the regulations.

Withdrawal from joint arrangements

Under paragraph 15(2)(g) of the regulations, the authorities entering into a joint arrangement must make sure that there is a procedure set out in the terms of reference to enable an authority to withdraw from the arrangement.

Any such procedure should ensure that any authority which wants to withdraw has to give sufficient notice before doing so. This is to enable the remaining authorities involved in the joint arrangements to:

- 1) consider what changes they need to make to the terms of reference and have time to implement those changes
- 2) decide how to deal with the financial consequences of the authority withdrawing.

We suggest a minimum notice period of six months in order to achieve this.

The terms of reference should make it clear what financial consequences flow from a decision by an authority to leave a joint arrangement. For example, six months' notice expiring on the 31 March might be required to withdraw from a joint arrangement. If this were the case, it would enable the authorities left in the joint arrangement to make proper budgetary provision for the joint arrangement in the following financial year, as part of their normal annual budget preparation process. It would also give them time to agree and implement any changes to the joint arrangements that they wish to make. They would additionally be able to sort out how to deal with forthcoming cases when the joint arrangement is disbanded or altered.

Suspension from joint arrangements

Under paragraph 3(3) of the regulations, the Standard Board for England can use its powers under Section 57d of the Local Government Act 2000 to suspend the initial assessment functions of a joint standards committee in the same way as it can a normal standards committee.

operation of a joint standards committee

Providing information to the Standards Board under sections 66B&C of the Local Government Act 2000

The Standards Board can demand periodic returns from authorities and information from them relating to the functions of standards committees and monitoring officers. Therefore any joint arrangements should ensure that responsibility for compiling returns and responding to requests for information is properly identified within the administrative arrangements agreed between the authorities.

Where there is a joint arrangement in place, the monitoring officer of the lead authority will be required to submit information about the composition of the standards committee.

Case information, even where the case was dealt with by a joint standards committee, must be submitted by the monitoring officer at the authority to which the subject member belongs.

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MODEL TERMS OF REFERENCE FOR JOINT STANDARDS COMMITTEES IN ENGLAND

[This document provides the terms of reference for a joint standards committee of relevant authorities in the form of a template for a model constitution. It is written in broad terms so that it can be used by authorities of the same type, or by authorities of different types. In some instances alternative approaches are offered, or authorities may wish to use this model as the basis for discussions leading to the production of a different document.]

1) Definitions

In this Constitution:

“the Act” means the Local Government Act 2000

“the Constituent Authorities” means

(a) *[insert name]*

(b) ... *[etc]*

“Executive”, “Executive Member”, “Elected Mayor” and “Executive Leader” have the same meaning as in the Act

“Independent Member” has the same meaning as in the Standards Committee Regulations

“the Joint Standards Committee” means the *[insert name]*

“Monitoring Officers” means the officers designated by the Constituent Authorities under section 5 of the Local Government and Housing Act 1989 and any deputy nominated by them acting

where they are unable to do so owing to absence or illness

“Proper Officer” has the same meaning as in the Local Government Act 1972

“the Regulations” means the Standards Committee (Further Provisions) (England) Regulations 2009

“Relevant Authority” has the same meaning as in the Act

“Scheme of Allowances” means any scheme of allowances made under the Local Authorities (Members Allowances) Regulations 2003

“the Standards Committee Regulations” means The Standards Committee (England) Regulations 2008

2) Constitution and Terms of Reference

2.1) The Constituent Authorities, in exercise of their powers under the Regulations, have each determined to establish a joint standards committee, to be known as the *[insert name]* to exercise those functions conferred by or under Part 3 of the Act or Part 1 of the Local Government and Housing Act 1989 set out in this Constitution.

2.2) The Joint Standards Committee is the standards committee to which written allegations under section 57A (1) of the Act may be sent *[either]* for all the Constituent Authorities *[or]* for the following Constituent Authorities: *[insert names]*.

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[It is important that each constituent authority is clear about whether it, or the joint committee, will receive written allegations, and that the process for publicising, receiving and submitting written allegations is clear and effective.]

- 2.3)** This Constitution contains the Terms of Reference of the Joint Standards Committee for the purposes of Regulation 15 of the Regulations and section 53 (9) of the Act.
- 3)** Functions to be exercised by the Joint Standards Committee
- 3.1)** The Joint Standards Committee may exercise the functions set out in Appendix 1.
- 3.2)** Any Standards Committee established by any of the individual Constituent Authorities may not exercise any function set out in Appendix 1.
- 4)** Membership of the Joint Standards Committee
- [The following version is for a joint committee where at least one constituent authority is responsible for parish councils. If no constituent authority has this responsibility then 4.1 (b) and 4.5 should be deleted and the other sub-paragraphs renumbered]*
- 4.1)** The Joint Standards Committee shall consist of:
- a)** *[insert number]* members of the Constituent Authorities, appointed by those authorities in accordance with paragraph 4.2;
- b)** *[insert number]* members of parish councils for which any of the Constituent Authorities is responsible, appointed in accordance with paragraph 4.5;
- c)** *[insert number which must be at least 25% of the total membership of the committee]* Independent Members, appointed in accordance with paragraph 4.6.
- 4.2)** Subject to paragraphs 4.3 and 4.4, the following Constituent Authorities shall appoint the following numbers of members of those authorities to be members of the Joint Standards Committee:
- a)** *[Name of Constituent Authority]* : *[number]* members
- b)** *[etc]*
- 4.3)** Appointment of Executive Members
- a)** No more than one of the members of the Constituent Authorities appointed under paragraph 4.2 shall be a member of the Executive of any of the Constituent Authorities.

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b) If an Executive Member has previously been appointed to and is still a member of the Joint Standards Committee then no further appointment of an Executive Member will be valid.

c) Otherwise, if the Constituent Authorities seek to appoint more than one Executive Member then only one appointment will be valid and the other Constituent Authorities will be required to make a new appointment. The valid appointment shall be agreed between the Constituent Authorities or in default of agreement shall be made annually in turn by each of the Constituent Authorities in the order set out in paragraph 4.2 starting with the Constituent Authority named in paragraph 4.2 (a).

[Alternative: provide as follows but amend annually – Only [insert name of Constituent Authority] may appoint a member of the executive of any of the Constituent Authorities as a member of the Joint Standards Committee.]

4.4) None of the members of the Constituent Authorities appointed under paragraph 4.2 shall be the Elected Mayor or

Executive Leader of any of the Constituent Authorities.

4.5) The Constituent Authorities that are responsible for parish councils shall each appoint [insert number] members of the parish councils for which they are responsible, who are not also members of any of the Constituent Authorities, to be members of the Joint Standards Committee.

[Alternatively – The following Constituent Authorities shall appoint the following numbers of members of the parish councils for which they are responsible, who are not also members of any of the Constituent Authorities, to be members of the Joint Standards Committee:

a) *[Name of Constituent Authority] : [number] members*

b) *[etc]*

4.6) The following Constituent Authorities shall appoint the following numbers of Independent Members (in accordance with the provisions of the Standards Committee Regulations) to be members of the Joint Standards Committee:

a) *[Name of Constituent Authority] : [number] members*

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- b)** [etc]
- 4.7)** A person who is disqualified under Part 5 of the Local Government Act 1972 or by the decision of a Case Tribunal under Part 3 of the Act for being a member of a relevant authority shall be disqualified for membership of the Joint Standards Committee.
- 5)** Tenure of office and casual vacancies
- 5.1)** A member of the Joint Standards Committee will hold office until one of the following occurs:
- a)** He or she resigns by giving written notice to the proper officer of the Constituent Authority that appointed him or her;
 - b)** He or she is removed or replaced by the Constituent Authority that appointed him or her;
 - c)** He or she is disqualified for membership of the Joint Standards Committee;
 - d)** He or she ceases to be eligible for appointment to the Joint Standards Committee in the capacity in which he or she was appointed;
 - e)** The Constituent Authority which appointed him or her ceases to participate in the Joint Standards Committee.
- [Options – We recommend that the appointing authority be given the power to replace a member under (b) but it is not essential. It is possible, instead, for all members, or a class of members such as independent members, to be appointed for a fixed term. In that case (b) would read:
- b)** He or she [option – , being an independent member/parish council member/member of a constituent authority] has held office for a period of [insert period] years.]
- 5.2)** A casual vacancy shall be filled as soon as possible by the Constituent Authority which appointed the member of the Joint Standards Committee whose membership has ceased.
- 6)** Sub Committees
- 6.1)** The Joint Standards Committee shall appoint Sub Committees in so far as is necessary to exercise its functions under Part 3 of the Act and may establish Sub Committees for other purposes in the exercise of its functions.
 - 6.2)** Each person appointed as a member of a Sub Committee must be a member of the Joint Standards Committee.
 - 6.3)** The Joint Standards Committee will determine the membership and terms of reference of the Sub Committee, and the

Schedule 1

- quorum for its meetings, when it is appointed.
- 6.4)** If the Joint Standards Committee appoints more than one Sub Committee to exercise one or more of its functions then it shall ensure that the Proper Officer of the Constituent Authority providing support to the Joint Standards Committee allocates particular matters to a Sub Committee first on the basis of the availability of the members required to constitute the Sub Committee, and thereafter by rotation, and summonses meetings accordingly.
- 7) Meetings and proceedings**
- 7.1)** The meetings and proceedings of the Joint Standards Committee shall be conducted in accordance with the rules set out in Appendix 2.
- 7.2)** The Joint Standards Committee will adopt standing orders or rules of procedure for the conduct of its meetings. The standing orders or rules of procedure must be consistent with the requirements of the Act, the Standards Committee Regulations and the rules set out in Appendix 2. They may provide for different procedures to be followed when the Joint Standards Committee or a Sub Committee is exercising different functions.
- 8) Monitoring Officers**
- 8.1)** The Monitoring Officers will agree and keep under review a protocol about how they will exercise their functions in relation to the matters dealt with by the Joint Standards Committee.
- 8.2)** The initial protocol is set out in Appendix 3. The Monitoring Officers will inform the Joint Standards Committee and the Constituent Authorities of any changes to the protocol.
- 9) Support**
- 9.1)** The Joint Standards Committee will appoint one of the Constituent Authorities to provide accommodation and professional, technical, administrative and clerical support for its meetings.
- 9.2)** The Joint Standards Committee will keep the appointment under review and may from time to time make a new appointment having regard to the geographical area that it covers and to the interests of economy, efficiency and effectiveness.
- [Alternatively the Constitution may provide for the rotation of the support function. Where this is done appropriate arrangements will need to be made for dealing with on-going cases]*

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For the period stated in column 1 of the following table, the Constituent Authority identified in Column 2 shall be appointed to provide accommodation and professional, technical, administrative and clerical support for its meetings.

Table	
Column 1	Column 2
Period	Constituent Authority
<i>[insert period, eg 1 June 2009 to 31 May 2009. Consider whether to rotate quarterly, six monthly, annually or less frequently.]</i>	<i>[Insert name] [etc]</i>
[etc]	

9.3) The Proper Officer appointed by the Constituent Authority for the time being providing such support will discharge the proper officer functions under the Local Government Act 1972 that relate to the meetings of the Committee. He or she will therefore prepare agendas and minutes and summaries of meetings and arrange for notices and other communications to and from the Joint Standards Committee to be given and received, save in so far as one of the Monitoring Officers agrees to undertake this activity.

10) Expenses of Joint Standards Committee

10.1) The expenses of the Joint Standards Committee and of the discharge of functions relating to matters dealt with by the Joint Standards Committee will be defrayed by the Constituent Authority providing support and by any Constituent Authority whose Monitoring Officer has dealt with or exercised his or her functions in relation to such matters.

10.2) The other Constituent Authorities will make payments to the Constituent Authority that has incurred expenses under paragraph 10.1, to defray them in such proportions as the Constituent Authorities shall all agree or in the case of disagreement as shall be determined by a single arbitrator agreed on by the Constituent Authorities, or, in default of agreement, appointed by the Secretary of State for Communities and Local Government.

10.3) In determining the allocation of expenses the Constituent Authorities or any arbitrator appointed under paragraph 11.2 will have regard to the principles set out in Appendix 4.

10.4) The Constituent Authority for the time being providing support will report to the Joint Standards Committee at least annually on such expenses, on their

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allocation between the Constituent Authorities and on the financial provision made by the Constituent Authorities to cover present and future expenses. The Joint Standards Committee may notify the Constituent Authorities if it considers that the financial provision is or is likely to be inadequate.

11) Allowances

11.1) The Constituent Authorities will review the Schemes of Allowances for their members, will consult each other for the purposes of the review, and will seek [*Option* - (with a view to ensuring that all members of the Joint Standards Committee of the same type and whose responsibilities are, in principle, the same, should have broadly the same entitlement)]:

- a)** To reach agreement as to which members of the Joint Standards Committee should receive allowances, the level of allowances, and whether related attendance or activity should affect, either directly or by reason of any calculations that are performed, the entitlement to allowances;
- b)** [*Option, if the joint committee appoints Independent Members* – To determine which Constituent Authority will pay any

allowances to Independent Members appointed by the Joint Committee;]

- c)** To ensure that no member of the Joint Standards Committee is paid more than one allowance, or more than one enhanced allowance, on account of such attendance or activities;
- d)** To ensure that the agreement reached is reflected in the Constituent Authorities' Schemes of Allowances.

11.2) An agreement reached under paragraph 11.1 shall not bind the Constituent Authorities so as to prejudice the legality of their decisions, or compromise their decision-making processes, under the Local Authorities (Members Allowances) Regulations 2003.

12) Withdrawal from the Joint Standards Committee

12.1) A Constituent Authority may cease to participate in the Joint Standards Committee by resolution to that effect taking effect on the date of the next annual meeting of the Constituent Authority, and communicated in writing to the Proper Officer the time being providing support to the Joint Standards Committee at least six [alternative – nine or twelve] months before the date on which it is to take effect.

Appendix 1

[Part 1]

Functions to be exercised by the Joint Standards Committee

[Option 1: all functions]

The Joint Standards Committee may exercise all the functions of a standards committee of a Constituent Authority conferred under Part 3 of the Act and Part 1 of the Local Government and Housing Act 1989.

[Option 2: some functions]

[Select from, or adapt, the following list. The phrase “all related actions and determinations” includes decisions about how meetings should be held and all the pre and post meeting paperwork, notifications and publicity.]

The Joint Standards Committee may exercise all the functions of a standards committee of a Constituent Authority relating to:

- 1) The general and specific functions set out in section 54 of the Act, namely:
 - a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority;
 - b) assisting members and co-opted members of the authority to observe the authority’s code of conduct;
 - c) advising the authority on the adoption or revision of a code of conduct;
 - d) monitoring the operation of the

authority’s code of conduct, and

- e) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority’s code of conduct

- 2) Publishing the address or addresses to which written allegations should be sent and the procedures to be followed (under Regulation 10 of the Standards Committee Regulations).

- 3) Receiving written allegations under section 57A of the Act and deciding what action, if any, to take, in relation to them, and all related actions and determinations.

[The Committee that “received” the complaints must decide how to respond to them. Administratively, other constituent authorities may provide an address to which complaints are sent, but they must then forward them directly to the Committee that will decide them.]

- 4) Receiving requests for a review under section 57B of the Act, deciding what action, if any, to take, and all related actions and determinations.

- 5) Receiving a report from a Monitoring Officer under Regulation 13 of the Standards Committee Regulations on the actions taken or proposed to comply with a direction to take steps other than carrying out an investigation, determining whether it is satisfied with the action specified in the report, and all related actions and determinations.

- 6) Receiving references back from a

Appendix 1

Monitoring Officer under Regulation 16 of the Standards Committee Regulations in relation to a matter referred for investigation, deciding what action, if any, to take, and all related actions and determinations.

- 7) Receiving reports from a Monitoring Officer under Regulation 14 of the Standards Committee Regulations, following investigation by the Monitoring Officer (as defined in the Standards Committee Regulations), considering the report and making findings under Regulation 17, and all related actions and determinations.
- 8) Receiving reports from a Monitoring Officer under Regulation 15 of the Standards Committee Regulations, following investigation by or on behalf of an Ethical Standards Officer, considering the report and making findings under Regulation 17, and all related actions and determinations.
- 9) Conducting hearings under Regulation 18 of the Standards Committee Regulations, making findings, imposing sanctions (if it finds that a sanction should be imposed), and all related actions and determinations including determining what action, if any, to take if there is an appeal and whether (and if so, how) to be represented at an appeal hearing.
- 10) In relation to written allegations made before the 8 May 2008, receiving reports from a Monitoring Officer under Regulation 5 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 , following investigation by or on behalf

of an Ethical Standards Officer or Monitoring Officer, deciding whether to accept a Monitoring Officer's finding of no failure to comply with the Code of conduct, conducting a hearing under Regulation 6, making findings, imposing sanctions (if it finds that a sanction should be imposed), and all related actions and determinations including determining what action, if any, to take if there is an appeal and whether (and if so, how) to be represented at an appeal hearing if the opportunity is given.

- 11) Considering recommendations of Case Tribunals and taking related action.
- 12) Receiving requests for dispensations from members and co-opted members wishing to take part in the business of a Relevant Authority despite having a prejudicial interest, under Part 4 of the Regulations, deciding whether to grant a dispensation, and all related actions and determinations.
- 13) Receiving any other notices or notifications, determining what action, if any, to take and all related actions and determinations.
- 14) Considering applications for exemption from political restriction or for directions to include a post in a list of politically restricted posts under section 3 of the Local Government and Housing Act 1989, making determinations and taking all related action.

Appendix 1

[Other functions]

In addition to the specific and general functions, section 54 of the Local Government Act 2000 allows a Standards Committee to exercise such other functions as the authority consider appropriate. These then become Standards Committee functions which may be exercised by Joint Standards Committees under the Regulations. In so far as these functions are conferred by or under Part 3 of the Act, or Part 1 of the Local Government and Housing Act 1989, they may be allocated to the Joint Standards Committee.

Some authorities have conferred other functions on Standards Committees under section 54, such as overview of internal and external audit (now more likely to be an Audit Committee function, overview of the whistle blowing policy, overview of complaints handling and Ombudsman investigations, and oversight of the constitution. These functions may not be allocated to a Joint Standards Committee and may remain with the Constituent Authorities Standards Committee, or be reallocated.]

The Constituent Authorities have decided that it is appropriate that the Joint Standards Committee should exercise the following additional functions:

[Select from, or adapt, the following list]

- 1)** Sending returns to the Standards Board for England under section 66B of the Act in relation to the functions of the Joint Standards Committee.
- 2)** Providing information to the Standards

Board for England under section 66C of the Act in relation to the functions of the Joint Standards Committee.

- 3)** Considering recommendations from a case tribunal under section 80 of the Act that relate to the functions of the Joint Standards Committee.

Appendix 2

Rules for the conduct of meetings and proceedings

1) Meetings

- 1.1) The Joint Standards Committee shall in every year hold an annual meeting.
- 1.2) The first Meeting held after the 31 May in any year shall be the annual meeting.
- 1.3) The Joint Standards Committee may hold such other meetings as they may determine.
- 1.4) The provisions of the Local Government Act 1972 and the Standards Committee Regulations (and transitionally the Relevant Authorities (Standards Committee) Regulations 2001 and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003), relating to giving a summons to attend the meeting, giving notice of time and place of the meeting, admission of the public and press to meetings, access to agendas and reports, preparation of and access to minutes of the meeting (or a written summary), access to background papers and the timing and conduct of hearings, that apply to a standards committee of a Relevant Authority, shall apply to the Joint Standards Committee.

2) Appointment of chair and vice-chair

[The style “chair” or “chairman” is a matter of choice.]

- 2.1) Subject to paragraph 2.4, the Joint Standards Committee shall at their annual meeting appoint a chair and a vice-chair from among the independent members of the Joint Standards Committee.
- 2.2) The chair and vice-chair shall, unless they resign their office or cease to be independent members of the Joint Standards Committee, continue in office until their successors become entitled to act.
- 2.3) In the case of an equality of votes in respect of the appointment of a chair or the appointment of a vice-chair, the person presiding at the meeting shall give a casting vote in addition to any other vote he or she may have.
- 2.4) The chair and vice-chair must be independent members.
- 2.5) Subject to paragraph 2.4, if a casual vacancy occurs in the office of chair or vice-chair of the Joint Standards Committee the vacancy shall be filled by the appointment by the Joint Standards Committee of one of their members at the next meeting and the person so appointed shall hold office until the next annual meeting.

3) Conduct of meetings

Appendix 2

6.3) Sub Committees will not hold an annual meeting.

6.4) The chair and vice chair of the Sub Committee may be appointed by the Joint Standards Committee when it appoints the Sub Committee or at any time thereafter but if it does not do so then the Sub Committee will make the appointments at its first meeting.

[Alternative - The Sub Committee will not appoint a chair or vice chair to hold office for more than one meeting but will appoint an independent member to chair each meeting as the first item of business at that meeting. In the case of an equality of votes in respect of the appointment of a chair lots will be drawn.]

6.5) The quorum for a Sub Committee meeting will be determined by the Joint Standards Committee when it appoints the Sub Committee but shall not be less than three.

6.6) For the avoidance of doubt, by virtue of Regulation 8 (5) (a) of the Standards Committee Regulations the provisions of Part 5 A of the Local Government Act 1972 do not apply to a Sub Committee considering an allegation received under section 57A (1) of the Act or reviewing a

decision under section 57B of the Act, and the provisions of Regulation 8 (5) (b) and (c) do apply.

[The joint committee may wish to draw up its own more detailed rules of procedure for meetings, following a model with which one of the Constituent Authorities is familiar. This might include the arrangements for substitute members. It should also draw up rules of procedure for hearings, taking into account the advice given by the Standards Board for England.]

Appendix 3

Protocol for the exercise of Monitoring Officer functions

- 1) This protocol has been agreed by the Monitoring Officers of the Constituent Authorities as a way of defining their relationship with the Joint Standards Committee and describing how they will exercise their statutory functions.
- 2) The objective is to ensure that the Constituent Authorities, the Joint Standards Committee, any other Standards Committee appointed by the Constituent Authorities, and the Monitoring Officers all:
 - 1) exercise their functions as effectively, efficiently and economically as possible
 - 2) demonstrate a strong ethical framework and structure within the authorities
 - 3) demonstrate innovation and best practice, strong outcomes for the community (including through partnership working), performance well above minimum accepted levels, and excellent value for money.
- 3) The Monitoring Officers necessarily retain personal responsibility for their statutory functions under sections 5 and 5A of the Local Government and Housing Act 1989 and Part 3 of the Local Government Act 2000. They may arrange for their functions under sections 5 or 5A to be performed by a member of their staff, nominated as their deputy for the purposes of those sections, but only if they are unable to act owing to absence or illness. It appears that such nomination is also effective for the purposes of Part 3, and therefore in these protocols “Monitoring Officer” includes a deputy acting in those circumstances.
- 4) Under section 82A of the Local Government Act 2000 the Monitoring Officer may delegate some, but not all, Part 3 functions (“the Delegable Functions”) to a person whom he or she has nominated. The criterion is that the Monitoring Officer considers that in a particular case he or she ought not to perform those functions.
- 5) The Delegable Functions are:
 - 1) Receiving a reference from a Standards Committee under section 57A of the Act and a direction to take steps other than an investigation, dealing with it and reporting further to the Standards Committee.
 - 2) Receiving a reference from a Standards Committee under section 57A of the Act and dealing with it by conducting an investigation, making a finding and reporting to the Standards Committee.
 - 3) Receiving a reference from an ESO under section 60 (2) or (3) of the Act and a direction to take steps other than an investigation, dealing with it and reporting further to the ESO.
 - 4) Receiving a reference from an ESO under section 60 (2) or (3) of the Act and dealing with it by

Appendix 3

- conducting an investigation, making a finding and reporting to the Standards Committee.
- 5) Receiving a reference from an ESO under section 64 (2) or (4) of the Act following an investigation by the ESO, sending a copy of the ESO's report to the subject member and referring the report to the Standards Committee.
- 6) The other functions under Part 3 cannot be delegated to a nominated person (the "Non-delegable Functions"). These include:
- 1) Receiving a reference from an ESO following a finding of "no failure to comply" or "no action" and deciding whether to send it to any member or officer of the authority.
 - 2) Receiving a copy of an ESO's interim report and deciding whether to send it to the Standards Committee and/or any member or officer of the authority.
 - 3) Receiving notice of a decision of an interim case tribunal.
 - 4) Maintaining the register of interests.
- 7) The Monitoring Officer also has "Non-statutory Functions": activities that are incidental to the specific statutory duties and help promote good standards of conduct, including:
- 1) Giving general advice to members and officers of the authority.
 - 2) Ensuring that the authority complies with its responsibilities under Part 3 of the Act.
- 8) The Monitoring Officer also has "Standards Committee Functions": activities to assist the Standards Committee in the exercise of its functions, including:
- 1) Advising the Standards Committee on the exercise of its general and specific functions under section 54 of the Act (promoting and maintaining high standards of conduct, assisting members to observe the Code of Conduct, advising on the Code, monitoring the operation of the Code and advising and training members on it).
 - 2) Advising the Standards Committee on the exercise of its specific functions under the Act.
 - 3) Attending and advising at meetings of the Standards Committee or a Sub Committee:
 - i) Assessing a written allegation
 - ii) Reviewing the assessment of a written allegation
 - iii) Considering reports from Monitoring Officer following (a) and ESO investigation (b) a MO investigation (c) other action by the MO

Appendix 3

- iv) Conducting a hearing
 - v) Considering requests for dispensations
 - vi) Exercising other functions.
- 9) The Monitoring Officers have agreed that these functions will be allocated in the following way:
- 1) They will each exercise the Non-delegable and Non-statutory functions relating to their authority.
 - 2) They will consider in each case whether or not they ought to perform the Delegable Functions personally, and if they decide that they will not:

[Insert text - Options include a lead authority offering this service, pooling spare capacity or joint procurement of external assistance.]
 - 3) In so far as the Standards Committee functions relate to the Joint Standards Committee [or list the functions in question] then they will be discharged by

[Option 1 - the Monitoring Officer for [insert name of Lead Authority].

Option 2 – the Monitoring Officer for the Constituent Authority which the Joint Standards Committee has appointed to provide accommodation and technical, professional, administrative and

clerical support for its meetings.

Option 3 – for the period stated in column 1 of the following table, the Monitoring Officer for the Constituent Authority identified in Column 2.

Table	
Column 1	Column 2
Period	Constituent Authority
[insert period, eg 1 June 2009 to 31 May 2009. Consider whether to rotate quarterly, six monthly, annually or less frequently.]	[Insert name] [etc]
[etc]	

- 10) The Monitoring Officers will cooperate to achieve the objectives of this protocol. They recognise that the operation of this protocol will need to be amended and refined and will keep it under review. Any changes will be reported to the Joint Standards Committee and the Constituent Authorities.

Appendix 4

Allocation of expenses

The Constituent Authorities will have regard to the following principles in determining the allocation of expenses:

[Select from the following. Delete references to parish councils if not relevant.]

- Any expenses directly attributable to:
 - an investigation or other action taken following a reference to a Monitoring Officer
 - consideration of a report by an ESO or a Monitoring Officer following an investigation or other action
 - any hearing
 - any appealwill be allocated to the Constituent Authority of which the subject member or co-opted member is a member, or which is responsible for the subject parish council member or co-opted member.
- Expenses directly attributable to the assessment or review of assessment of written allegations will be allocated pro rata to the number of written allegations received against members or co-opted members of each Constituent Authority (or for which the Constituent Authority is responsible).
- Expenses relating to allowances paid to members of the Joint Standards Committee *[Option, if the joint committee appoints Independent Members – ,* apart from allowances paid to Independent Members appointed by the Joint Standards Committee] by reason of their attendance at meetings

and other related activities will be allocated pro rata to the number of members appointed by the authorities *[Or will be allocated to the Constituent Authority which appointed the member to whom the allowance was paid].*

- Expenses *[Or Other expenses]* will be shared equally between the Constituent Authorities.
[Or]
- Expenses *[Or Other expenses]* will be shared in the following proportions:
[Name of authority] : [insert] %
[etc]
[Or]
- Expenses *[Or Other expenses]* will be shared pro rata to the number of written allegations received against members or co-opted members of each Constituent Authority (or for which the Constituent Authority is responsible).

Schedule 2

CHECKLIST (NOT TO FORM PART OF CONSTITUTION)

In order to decide which options to select, the Constituent Authorities will need to decide:

- 1) The name of the Joint Standards Committee.
- 2) Whether the Joint Standards Committee is to receive written allegations for assessment.
- 3) Whether any of the Constituent Authorities is responsible for parish councils.
- 4) The number of members of the Joint Standards Committee.
- 5) The number of members appointed from each of the Constituent Authorities.
- 6) The number of parish council members appointed by each of the Constituent Authorities.
- 7) Whether the Joint Standards Committee or the Constituent Authorities will appoint Independent Members, and, in either case, how many.
- 8) Whether any of the Constituent Authorities is to have the sole right to appoint an executive member, or whether this right is to be allocated by agreement (or in default, in turn on an annual basis), or by some other means.
- 9) Whether a Constituent Authority should be able to replace a member they have nominated, or whether the appointment should be for a period of time (subject to continuing eligibility).
- 10) Which Constituent Authority is to provide support and proper officer functions, and whether this is for an indefinite period or by rotation.
- 11) Whether, in principle, all Joint Standards Committee members of the same type, and with the same responsibilities, should be entitled to the same allowance.
- 12) What period of notice is needed to withdraw from the joint committee.
- 13) Whether the joint committee is to exercise all relevant functions, and, if not, which it is to exercise.
- 14) Whether the joint committee is to exercise the same functions for all Constituent authorities.
- 15) Whether the joint committee is to exercise other Part 3 functions, and, if so, which.
- 16) The quorum for Committee meetings.
- 17) Whether Sub Committees are to have standing or ad hoc chairs/chairmen.
- 18) How expenses are to be shared: in particular whether:
 - 18.1) the authority concerned should bear the whole cost of their investigations, hearings and appeals;
 - 18.2) assessment costs should be allocated pro rata to the number of complaints per authority;
 - 18.3) allowances should be paid by the nominating authority;
 - 18.4) other expenses (e.g. training) are to be shared equally or in some other proportion.

Schedule 2

The Monitoring Officers will need to decide:

- 1) Which options for the discharge of delegable functions by nominated officers they prefer.
- 2) Who is to advise the Joint Standards Committee, and for how long.

The Joint Committee will need to decide:

- 1) The number, composition and terms of reference of sub committees.
- 2) The quorum for Sub Committee meetings
- 3) Whether it should have more detailed procedural rules for meetings, and if so which.
- 4) The procedural rules for hearings.
- 5) Assessment and review criteria and other policies.

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DISPENSATIONS

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introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

dispensations

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:
 - the authority
 - its executive and its committees and sub-committees
 - any other committees, sub-committees, joint committees, joint sub-committees or area committees

of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

dispensations

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

Considerations for dealing with dispensation requests

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation

to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

dispensations

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

It is our view that the regulations do not
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dispensations

allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.

OTHER ACTION GUIDANCE

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introduction

- 1) This guidance on other action is aimed at members of standards committees. It is not mandatory but has been written to help describe what other action is, when it might be used, and how the process can be managed.
 - Although there is no formal route for dealing with a member who refuses to comply with other action, failure to cooperate may amount to bringing the authority into disrepute.
- 2) Advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local Investigations and Other Action and How to Conduct an Investigation**.
- 3) The Standards Board's key messages on other action are:
 - Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the member's honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
 - A referral for other action closes the opportunity to investigate.
 - A decision to refer a complaint for other action makes no finding of fact, and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
 - Assessment sub-committees cannot direct the subject member or any other party to take action. The direction is to the monitoring officer.

what is other action?

- 4) An assessment sub-committee has **three** options when dealing with a complaint that a member has failed or may have failed to comply with the Code of Conduct. The Local Government Act 2000, as amended, states that it can decide to refer the complaint to the monitoring officer of the authority concerned, refer it to the Standards Board, or take no action.
- 5) If the assessment sub-committee decides to refer a complaint to the monitoring officer, it can direct them to investigate the matter. Alternatively, it can direct them to take steps other than carrying out an investigation. This is known as other action.
- 6) Generally, there are **two** indicators for other action. The **first** is when there is evidence of poor understanding of the Code of Conduct and/or the authority's procedures. The **second** indicator for other action is when relationships within the authority as a whole have broken down to such an extent that it becomes very difficult to conduct the business of the council.
- 7) The Standards Committee (England) Regulations 2008 explain that the steps a standards committee can direct a monitoring officer to take are:
 - arranging for the member to attend a training course
 - arranging for the member and complainant to engage in a process of conciliation
 - any other steps (not including an investigation) which appear appropriate
- 8) Suggestions as to types of training courses a member might attend, and other steps a standards committee might consider appropriate, are listed in the next section (**What might other action involve?**).

what might other action involve?

- 9) The Standards Committee (England) Regulations 2008 specifically provide that a referral for other action may consist of a direction to the monitoring officer to arrange for the member to attend a training course. Training may be in anything the assessment sub-committee deems appropriate, such as:
- chairing skills
 - working with external bodies and partnerships
 - governance issues
 - the Code of Conduct
 - council procedures and protocols
 - legal matters
 - planning and licensing
 - working with officers
 - use of council resources
- 10) In general, other action may take the form of directing the monitoring officer to arrange for the:
- redrafting of council procedures or policies
 - training of members of the council as a whole
 - mentoring of a member or members, or whole council
 - management of conflict
 - development of council protocols
 - implementation of a council complaints procedure
- 11) A referral for other action does not mean that the member has been found to have done anything wrong (see the next section '**Deciding to take other action**'). It is therefore very important that the action proposed does not imply this. Other action cannot, for example, take the form of requiring the subject member to apologise. Of course, in those cases where the member has admitted the breach and offered an apology, the assessment sub-committee may decide that no further action is necessary.
- 12) **It is particularly important to remember that an assessment sub-committee can only direct a monitoring officer to take other action. It has no power to direct anyone else to do so.**

deciding on other action

- 13) A decision to refer a complaint for other action – like all assessment decisions – does not involve making any findings of fact. All parties should understand that a decision to take other action means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member failed to comply with the Code.
- 14) Similarly, everyone involved in a decision to take other action must understand that the purpose of such a referral is not to find out whether the member breached the Code of Conduct. This is regardless of how simple it may be to establish the facts. A decision to direct the monitoring officer to take other action is an alternative to an investigation. It cannot ever result in a finding that the member has or has not failed to comply with the Code.
- 15) The assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be behaviour which would necessarily require the subject member to face one of the sanctions it could impose. This excludes training, which can be other action decided on at assessment stage, and a sanction following a hearing. The assessment sub-committee should also be satisfied that other action could assist the proper functioning of the council.
- 16) Other action is not intended to be a quick and easy means of dealing with matters which the assessment sub-committee considers to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action. While other action can be a cost-effective way of getting a matter resolved, it is not a quick-fix. Furthermore, other action should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time-consuming process.
- 17) Standards committees should take care to avoid it appearing to the complainant that deciding to take other action is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.
- 18) Importantly, if a complaint merits being investigated, then it should be referred for investigation. For example, complaints should not be referred for other action when an investigation would be in the public interest. Other action should also be avoided where the allegation fundamentally challenges the member's honesty or integrity. It should additionally be avoided where the allegation, if proven, would warrant any of the sanctions (apart

deciding on other action

from training) available to a standards committee after a hearing.

- 19) Assessment sub-committees must not refer an allegation for other action without consulting the monitoring officer, who will often be present at the assessment meeting. If the monitoring officer is not present, and has not given any indication of their views on other action, the assessment meeting may need to be adjourned.
- 20) The monitoring officer may be able to advise the assessment sub-committee how viable the proposed other action is, by providing information on the resources available to them. They may be able to tell the assessment sub-committee how much any proposed other action might cost. They might also be able to advise whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as trained mediators.

when is other action appropriate?

- 21) The first stage in assessing a complaint is to determine whether it is within jurisdiction. In other words, the assessment sub-committee needs to decide whether, if what the complainant alleges were true, the Code of Conduct would apply. If the Code would not apply to the alleged conduct, the only decision an assessment sub-committee is able to make is to take no action. Other action will never be appropriate in these cases.
- 22) In general, the Standards Board believes that other action is most beneficial when used to deal with systemic problems rather than individual ones. The action proposed does not have to be limited to the subject of the complaint. Several members, or indeed a whole authority, could be included in the action the monitoring officer is asked to take.
- 23) Matters which standards committees might consider referring for other action include:
- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures
 - a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the council
 - misunderstanding of procedures or protocols
 - misleading, unclear or misunderstood advice from officers
 - lack of experience or training
 - interpersonal conflict
 - allegations and retaliatory allegations from the same members
 - allegations about how formal meetings are conducted
 - allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves
- 24) We advise standards committees to draw up assessment criteria which detail the matters they will take into account when deciding what action, if any, to take. Every decision to take other action – like all assessment decisions – can then be made with reference to these criteria.

adjournment

- 25) Some assessment sub-committees are reluctant to refer a complaint for other action without knowing whether the subject member and other members of the authority will cooperate with the proposed approach.
- 26) One way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers might be suitable for other action. The standards committee can then ask the monitoring officer to find out whether the member or members will cooperate. Although this option is not specifically provided for by the legislation, we do not consider that it is prohibited. Meetings may also be adjourned to enable the monitoring officer to find out more information about the complaint.
- 27) It is up to each authority to decide whether their assessment of a particular complaint should be adjourned. They should consider the advantages and disadvantages of adjournment when making this decision. They should also bear in mind that we advise that assessment decisions should be made within an average of 20 working days, and that an adjournment may mean that that the average assessment time increases.
- 28) Advantages of adjournment are:
- Those sitting on the assessment sub-committee will know what the members think about the proposed solution, and may therefore be more confident in making their decision.
 - Members may be likely to cooperate if they are made aware of the options available.
 - When members indicate that the action would be ineffective, the sub-committee still have the option of deciding to refer the complaint for investigation.
 - Further information obtained by the monitoring officer may mean that the complaint is effectively resolved, enabling the sub-committee to decide to take no action.
- 29) Disadvantages of adjournment are:
- Finding out members' views runs the risk of putting the decision about what action to take into the hands of the member, rather than the sub-committee.
 - The authority of the standards committee may be undermined if other action is agreed through negotiations between the monitoring officer and the member or members.
 - By making further enquiries, the monitoring officer may end up starting an investigation before the assessment decision is made.

adjournment

- The member or members may try to pass on more information to the monitoring officer, to persuade the sub-committee to take no action.
- 30) As an alternative to adjourning the assessment meeting, the standards committee could agree that the monitoring officer seeks views on other action when they receive a complaint.

role of the monitoring officer

- 31) When a matter has been referred for other action, it is the monitoring officer's duty to give notice to the relevant parties. These relevant parties are:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority concerned
 - any parish council concerned
- 32) If the standards committee issues a decision notice that goes to all these parties, the Standards Board considers that the monitoring officer's responsibility is met.
- 33) Whoever notifies the parties of the decision should take care over how the decision is conveyed. It is important that the wording does not imply that the member is culpable. It is also important that members do not feel they have been found guilty without an investigation of the allegation. Note that both parties could end up potentially feeling dissatisfied. This is because complainants and subject members do not have the right to have the decision to refer a matter for other action reviewed under Section 57B of the Local Government Act 2000.
- 34) When a monitoring officer receives a referral with a direction to take other action, they must deal with it in accordance with the direction. They do not have discretion to take a different course of action and should make every attempt to ensure that the action specified is carried out successfully.
- 35) Information and advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local investigations and other action** and **How to conduct an investigation**.
- 36) The monitoring officer must submit a written report to the standards committee within three months of receiving the direction, or as soon as possible after that. This report must give details of the action taken or the action proposed to comply with the direction.

consideration of the monitoring officer's report

- 37) The standards committee or an appropriate sub-committee should consider the monitoring officer's report and decide whether it is satisfied with the action described. The meeting at which the report is considered is subject to the general notice and publicity requirements under regulation 8 of the Standards Committee (England) Regulations 2008.
- 38) The monitoring officer's report can be considered by the same members who initially assessed the complaint, by another sub-committee, or by the standards committee as a whole. This is a decision to be made by each authority, and will depend on the way in which the committee has been set up, what sub-committees it has and the terms of reference of each body.
- 39) The advantage of the same members considering the report is that they will be aware of the details of the original complaint. However, some authorities may consider that convening a sub-committee simply for this purpose is not a good use of time and resources. They might instead choose to include consideration of the monitoring officer's report as an item on the agenda of the regular meeting of the standards committee.
- 40) If the standards committee or sub-committee **is** satisfied with the action described in the monitoring officer's report, it should give notice of this to all of the following:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority involved
 - any parish council concerned
- The matter is then closed.
- 41) If the standards committee or sub-committee is **not** satisfied, it must give another direction to the monitoring officer, which must again be to take some kind of other action. The standards committee cannot at this stage decide that the matter should be investigated. This is discussed further in the section below.
- 42) If the report describes action which has been proposed but not yet taken, the standards committee should decide whether this is satisfactory. If it has doubts about whether the action will take place, it should consider whether or not to give a further direction to the monitoring officer. The standards committee or sub-committee may also consider making a further direction where the report indicates that the member has refused to cooperate, has done so unwillingly or inadequately, or has not engaged with the process.

what if other action does not work?

- 43) Each time a standards committee or sub-committee directs a monitoring officer to take other action, the monitoring officer must submit a written report detailing the action taken or proposed. If dissatisfied, the standards committee can direct the monitoring officer to take further other action.
- 44) In theory, if a standards committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However, standards committees should be proportionate and reasonable in their directions. We believe that the process should be drawn to a close after a limited number of attempts by the monitoring officer to bring about other action – even where this has not occurred in accordance with the direction.
- 45) There is no formal route for dealing with a member who categorically refuses to comply with other action. However, the Standards Board believes that deliberate and continued failure to cooperate with a monitoring officer who is trying to carry out the directions of a standards committee may potentially amount to conduct which brings the office of councillor into disrepute. Furthermore, an assessment sub-committee may take this into account when deciding what action to take if they are assessing a complaint about a member who has previously failed to cooperate.
- 46) If a standards committee receives a complaint that a member did not cooperate with other action in relation to a previous complaint, they should only assess the complaint about the failure to cooperate. They should not take into account the conduct which led to the original complaint.
- 47) If the complaint is accepted for investigation then it is vitally important that any investigation focuses on the lack of cooperation and not the original complaint that led to the other action. Otherwise there is a danger that the original complaint will be resurrected. This is particularly important where the member says that the lack of cooperation was because they had done nothing wrong.

why other action closes the opportunity to investigate

- 48) Once an assessment sub-committee has decided to refer a matter for other action, this becomes the way forward in that particular case. If a standards committee is not satisfied that the action taken has not achieved the aim of the direction to take other action, it cannot then decide the matter should be investigated. The assessment sub-committee needs to be clear at the outset that should other action be unsuccessful or only partially successful, that it would still then remain the preferred course of action.
- 49) The legislation is clear on this issue. Once an allegation is referred under Section 57A(2) of the Local Government Act 2000 to the monitoring officer to take steps other than investigation, those steps are the ones referred to in regulation 13(3) of the Standards Committee (England) Regulations 2008. They are limited to arranging for training, a process of conciliation or such other steps – not including investigation – which the standard committee considers to be appropriate. There is no power that allows the case to be referred on for investigation if these options under regulation 13(3) are perceived to have failed.
- 50) Regulation 14(1) of the same regulations says that regulation 14 applies only if regulation 13 is not applied. If other action has been attempted, regulation 13 has been applied.
- 51) As well as being set out in statute, there are sound reasons why complaints which have been referred for other action should not then be investigated. Firstly, there are difficulties in deciding why the action has ‘failed’; whether it has failed and if so, why an investigation is thought to be needed. This subjective judgment has the potential to increase the complainant or the subject member’s dissatisfaction with the process. In some circumstances, it may also risk deliberate non-cooperation with the action prescribed in order to secure an investigation.
- 52) An investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

why other action closes the opportunity to investigate

- 53) The issue of timeliness is also key for all parties when dealing with an allegation of misconduct. It is questionable as to how fair the process would be, for both the subject member and complainant, if it is extended for the duration of the other action taking place and the investigation that follows it. Where other action is undertaken before an investigation, there is the risk that the case will be prejudiced. Witnesses may become prejudiced, there may be problems obtaining evidence, and an investigation may be jeopardised if the issues are discussed in detail as part of a mediation process.

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BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

22ND JULY 2009

WORK PROGRAMME

Responsible Portfolio Holder	Councillor Geoff Denaro
Responsible Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Non-Key Decision	

1. SUMMARY

This report sets out a Work Programme for the Standards Committee.

2. RECOMMENDATION

It is recommended that, subject to any amendments made to it by the Committee, the Work Programme be approved.

3. BACKGROUND

3.1 The Standards Committee established a Work Programme at its meeting on 7th February 2008.

3.2 A Work Programme is beneficial to the Committee for the following reasons:

- (a) to ensure the Committee is fulfilling its roles and functions in accordance with the Council's Constitution;
- (b) to enable officers to be proactive in supporting the Committee and for the Committee to be equally proactive in introducing change to ensure the Council is an ethical organisation, which promotes and maintains high standards of conduct of elected Members, and is an organisation which relates to the community and improves the service it provides; and
- (c) the rising profile of standards committees and, in particular, the changes brought about by the introduction of the local assessment of complaints of alleged breaches by district and parish councillors of the Code of Conduct, under the Local Government and Public Involvement in Health Act 2007.

3.3 The Work Programme will appear as a regular item on all Standards Committee agendas.

3.4 Officers will update the Work Programme, as appropriate, in between meetings and any amendments to this will be referred to the next meeting of the Committee for approval. Members of the Committee are welcome to contact officers, at any time, with suggested changes.

3.5 The Committee is asked to consider the Work Programme and to comment on this accordingly.

4. FINANCIAL IMPLICATIONS

None

5. LEGAL IMPLICATIONS

None

6. COUNCIL OBJECTIVES

6.1 The Work Programme is linked to the Council's Improvement Objective, Priority - Customer Service.

6.2 A Work Programme will assist in informing Members, officers and the public of the work being undertaken by the Committee in ensuring that the Council is an ethical organisation, which is proactively working towards improvement.

7. RISK MANAGEMENT

None

8. CUSTOMER IMPLICATIONS

None

9. EQUALITIES AND DIVERSITY IMPLICATIONS

None

10. VALUE FOR MONEY IMPLICATIONS

None

11. OTHER IMPLICATIONS

Procurement Issues	None
Personnel Implications	None

Governance/Performance Management	A Work Programme will assist the Committee in being proactive in fulfilling its role in ethical governance.
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	No
Chief Executive	No
Executive Director (Partnerships and Projects)	No
Executive Director (Services)	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	No
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

13. WARDS AFFECTED

All Wards

14. APPENDIX

Standards Committee Work Programme.

15. BACKGROUND PAPERS

None

CONTACT OFFICER

Name: Debbie Parker-Jones,
Ethical Standards Officer
Email: d.parkerjones@bromsgrove.gov.uk
Direct line: (01527) 881411

STANDARDS COMMITTEE WORK PROGRAMME

[Note: Any items that it is proposed should be removed from the Work Programme are denoted by a strikethrough, with any new additions and/or rescheduled items appearing in bold italics.]

Meeting date	Item(s) for consideration
23rd September 2009	<ul style="list-style-type: none"> • Annual Ombudsman Complaint Statistics (<i>final report for period ending 31st March 2009 and to include comparison with neighbouring authorities</i>) • Parish Councils' Training Programme - update • <i>Review of Planning Services Code of Practice/ Planning Committee Procedure Rules/Public Speaking at Planning Committee Meetings guidance</i> (Min. 125/08 (ii) of 29th April 2009 full Council meeting refers) • <i>Appointment of Vice-Chairman</i> (effective from 21st October 2009)
11th November 2009	<ul style="list-style-type: none"> • <i>Leadership report on links between Standards Committee and Council's senior officers and politicians</i> (Min. 08/09 (vi) of 20th May 2009 Standards Committee meeting refers) • <i>Mechanisms for appointment of substitutes on Standards Committee and Standards Sub-Committees</i> (Min. 10/09 (vii) of 20th May 2009 Standards Committee meeting refers)
13th January 2010	
24th March 2010	<ul style="list-style-type: none"> • Ombudsman Complaint Statistics (<i>interim update for period ending 31st September 2009</i>) • (Annual) Review of Council protocols on Member-Officer and Member-Member Relations • Parish Councils' Training Programme - update • (Annual) Review of the operation of the Standards Committee • Calendar of meetings - 2010/2011

May 2010 <i>(Date to be determined)</i>	<ul style="list-style-type: none"> • Appointment of Chairman and Vice-Chairman • Annual Report of the Standards Committee - 2009/10 • (Annual) Review of the operation and effectiveness of the Members' Code of Conduct <i>(provisional date dependent on when new Code introduced)</i>
July 2010 <i>(Date to be determined)</i>	
September 2010 <i>(Date to be determined)</i>	<ul style="list-style-type: none"> • <i>(Annual) Review of Planning Services Code of Practice</i> <i>(provisional date dependent on when 2009 review completed)</i>
Later meetings	<ul style="list-style-type: none"> • 2011 Review of terms of office of Parish Councils' Representatives on the Standards Committee <i>(to be completed prior to June 2011/CALC nominations to full Council - Min. 125/08 (i) of 29th April 2009 Council meeting refers)</i>
<p>Note: All meetings of the Committee will include regular items such as:</p> <ul style="list-style-type: none"> • Minutes of previous meeting; • Monitoring Officer's Report; • Parish Councils' Representatives' Report; and • Work Programme. 	