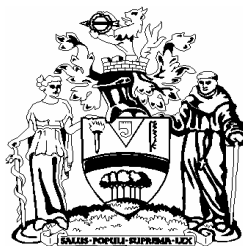


London Borough of Harrow



STANDARDS COMMITTEE

TUESDAY 7 OCTOBER 2003

7.30 PM

COMMITTEE AGENDA

COMMITTEE ROOM 5, HARROW
CIVIC CENTRE

MEMBERSHIP (Quorum 2 Councillors and 1 Independent Person)

Chair: To be appointed.

Councillors:

Ann Groves
Harrison
Thammaiah

Janet Cowan
Mrs Joyce Nickolay

Miss Lyne

Independent Persons: Bijal Shah
Revd Peter Broadbent

Reserve Members:

1. Gate	1. Jean Lammiman	1. Thornton
2. Toms	2. Osborn	2. Branch
3. Marie-Louise Nolan	3. Mrs Champagnie	

Issued by the Committee Services Section,
Law and Administration Division

Contact: Michelle Fernandes, Committee Administrator
Tel: 020 8424 1542 E-mail: michelle.fernandes@harrow.gov.uk

***NOTE FOR THOSE ATTENDING THE MEETING:
IF YOU WISH TO DISPOSE OF THIS AGENDA, PLEASE LEAVE IT BEHIND AFTER THE MEETING.
IT WILL BE COLLECTED FOR RECYCLING.***

LONDON BOROUGH OF HARROW

STANDARDS COMMITTEE

TUESDAY 7 OCTOBER 2003

AGENDA - PART I

1. **Appointment of Chair:**
To appoint a Chair for the Committee for the remainder of the Municipal Year 2003/2004.
2. **Appointment of Vice-Chair:**
To appoint a Vice -Chair for the Committee for the remainder of the Municipal Year 2003/2004.
3. **Attendance by Reserve Members:**
To note the attendance at this meeting of any duly appointed Reserve Members.
4. **Declarations of Interest:**
To receive declarations of interest (if any) from Members of the Committee arising from business to be transacted at this meeting.
5. **Arrangement of Agenda:**
To consider whether any of the items listed on the agenda should be considered with the press and public excluded on the grounds that it is thought likely, in view of the nature of the business to be transacted, that there would be disclosure of confidential information in breach of an obligation of confidence or of exempt information as defined in the Local Government (Access to Information) Act 1985.
6. **Minutes:**
That the minutes of the meeting held on 11 June 2003, having been circulated, be taken as read and signed as a correct record.
7. **Public Questions:**
To receive questions (if any) from local residents or organisations under the provisions of Committee Procedure Rule 18 (Part 4B of the Constitution).
8. **Petitions:**
To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 15 (Part 4B of the Constitution).
9. **Deputations:**
To receive deputations (if any) under the provisions of Committee Procedure Rule 16 (Part 4B of the Constitution).
- Enc. 10. **Standards Committee Event:** (Pages 1 - 4)
Report of the Borough Solicitor.
- Enc. 11. **Recommendation from the Member Development Working Party:**

(Pages 5 - 8)

Enc. 12. **Monitoring Officer Protocol:** (Pages 9 - 18)
Report of the Borough Solicitor.

Enc. 13. **Complaints Against Councillors: Local Determination of Complaints Referred from the Standards Board for England:** (Pages 19 - 56)
Report of the Borough Solicitor.

AGENDA - PART II

To Follow 14. **Referral to the Standards Board and Advisory Letter to Member:**
Report of the Borough Solicitor.

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LONDON BOROUGH OF HARROW

Meeting:	Standards Committee
Date:	7 October 2003
Subject:	Standards Committee Event
Key decision:	No
Responsible Chief Officer:	Gerald Balabanoff – Borough Solicitor
Relevant Portfolio Holder:	N/A
Status:	Part 1
Ward:	N/A
Enclosures:	N/A

1. Summary/ Reason for urgency (if applicable)

1.1 Standards Committee Members from the Boroughs of Harrow, Ealing, Hillingdon, Hammersmith and Fulham and Hounslow are invited to attend a social gathering at Brent Town Hall to discuss, share, and hopefully enhance your knowledge relating to the implementation of the new ethical framework, how to hold a hearing, declaring interests/gifts/hospitality, etc. The email attached (Appendix 1) refers.

2. Recommendations (for information)

2.1 That Members of the Standard Committee attend the gathering at Brent Town Hall

REASON: To discuss, share, and hopefully enhance your knowledge

3. Consultation with Ward Councillors

3.1 N/A

4. Policy Context (including Relevant Previous Decisions)

4.1 N/A

5. **Relevance to Corporate Priorities**

5.1 N/A

6. **Background Information and options considered**

6.1 Appendix 1 refers.

7. **Consultation**

7.1 N/A

8. **Finance Observations**

8.1 N/A

9. **Legal Observations**

9.1 N/A

10. **Conclusion**

10.1 That Members of the Standard Committee attend the gathering at Brent Town Hall, Forty Lane, Wembley, Middlesex, HA9 9HD

11. **Background Papers**

11.1 Appendix 1 refers.

12. **Author**

12.1 Michelle Fernandes, Committee Administrator,
d/l; 020 8424 1542
email; michelle.fernandes@harrow.gov.uk

**Message from Terry Osborne,
Borough Solicitor and Monitoring Officer,
Brent Town Hall**

"Dear Colleagues,

I am writing to all Monitoring Officers in the West London Alliance namely, Harrow, Ealing, Hillingdon, Hammersmith and Fulham and Hounslow. All of us will have received various booklets from the Standards Board regarding how to hold a hearing, declaring interests/gifts/hospitality, etc. This is further to the latest regulations (concerning standards committees) in force as at 30 June 2003. I have now been approached by the Chair of Brent's standards committee (John Mann), an independent, who is very keen to get together with standards committee members and monitoring officers from the boroughs in the alliance. I think this is a particularly good idea as the sharing of experience/problems/queries in a social and informative evening can only enhance the implementation of the new ethical framework within our particular boroughs. I do appreciate that each borough has adopted/in the process of adopting their own practice directions. However, John and I are in agreement that problems common to members (and not entirely made clear by the regulations or guidance!) and practical considerations could be effectively debated.

I am in the process of liaising with the Standards Board regarding the possibility of a speaker to address an evening gathering at a suitable venue in Brent. Whilst the focus is to meet other members, it would be useful to hear from the Standards Board. Would you all let me know whether you believe your committee members would be interested together with potential numbers? I have pencilled in both the 6th and 13th November 2003 as possible dates. It is envisaged that the meeting is likely to last no more than 2 ½ hours with the provision of a light buffet and drinks. I will be telephoning you in a couple of days for feedback. If you have any queries, would you contact either myself or the lawyer co-ordinating the event, Helen Keep at Helen.Keep@brent.gov.uk or 020 8937 1368.

Kind regards,

Terry Osborne
Borough Solicitor and Monitoring Officer
020 8937 1292"

London Borough of Brent, Legal Services, Town Hall, Forty Lane, Wembley,
Middlesex, HA9 9HD, Tel: 020 8937 1292, Fax: 020 8937 1313

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MEMBER DEVELOPMENT PANEL

23 JULY 2003

Chair: * Councillor Ann Groves

Councillors: * Branch (1) * Marie-Louise Nolan
* Jean Lammiman

* Denotes Member present
(1) Denote category of Reserve Member

PART 1 RECOMMENDATIONS

RECOMMENDATION 1 - Annual Process for Member Development

The Panel received a report from the Training and Development Manager which outlined the Annual Process cycle for Member development. She explained that the new cycle would bring more structure and clarity to the Member development process. Under the new programme, the Executive Director (Organisational Development) would be responsible for the Member development programme and the budget. This would allow Members to plan the annual process in advance rather than on an ad hoc basis. This was in line with recommendations made in the Comprehensive Performance Assessment Performance Plan. (See also Minute 88). Upon discussion it was

Resolved to RECOMMEND (to Standards):

(1) To use a process based on an annual cycle for Member development as outlined in the amended Appendix 1 for planning, approving, monitoring and evaluating development for Members;

(2) That the Executive Director (Organisational Development) is responsible for developing and co-ordinating a Member development programme and for approving costs associated with the budget for Member development.

REASON: to ensure a cost effective co-ordinated approach

Author: Caroline Hart, Committee Administrator, tel. 020 8424 1323

[Note: Background Documents and Reports are available from the Committee Administrator on request.]

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Annual Cycle – Member Development

Analysis of development needs, requirements and opportunities

DEC - FEB	IDENTIFY ORGANISATIONAL PRIORITIES FOR MEMBER DEVELOPMENT (Cabinet)	IDENTIFY ISSUES FOR MEMBER DEVELOPMENT (CMT)	RESEARCH EXTERNAL DEVELOPMENT OPPORTUNITES (OD)	EVALUATE PROGRAMME AND RESEARCH MEMBERS NEEDS (MDP)
MARCH	DRAFT PROGRAMME (OD)			
APRIL	CORPORATE MANAGEMENT TEAM (internal/external resourcing)	MEMBER DEVELOPMENT PANEL (Approval)		
APRIL	REPORT TO STANDARDS (evaluation of previous year & approval for next) & CABINET (for information)			
MAY	PROMOTE AGREED PROGRAMME (OD & Corp Comms)			
MAY - SEP	Internal Corporate programme MDP - Provide programme & monitor quality and costs	External Corporate events for individuals Portfolio holders/ chair of scrutiny support training Exec, Director OD approve funding in consultation with MDP MDP - Monitor quality and costs	Internal departmental programme Departmental managers (co-ordinate with OD)	External departmental events Agreed in departments
SEP	EVALUATE 1 ST SIX MONTHS & REVISE ESTIMATES			
OCT - DEC	Internal Corporate programme MDP - Provide programme & monitor quality and costs	External Corporate events Portfolio holders/ chair of scrutiny support training Exec, Director OD approve funding in consultation with MDP MDP - Monitor quality and costs	Internal departmental programme Departmental managers (co-ordinate with OD)	External departmental events Portfolio holders approve funding
JAN	EVALUATE & RESTART CYCLE FOR ON-GOING PROGRAMME			

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Meeting:	Standards Committee
Date:	7 th October 2003
Subject:	Monitoring Officer Protocol
Key decision:	N/A
Responsible Chief Officer:	Gerald Balabanoff – Borough Solicitor
Relevant Portfolio Holder:	N/A
Status:	Part 1
Ward:	N/A
Enclosures:	Protocol for Monitoring Officer responsibilities

1. **Summary/ Reason for urgency (if applicable)**

- 1.1 Best practice encourages local authorities to adopt a Protocol for the Monitoring Officer to ensure that Members and Officers can support the Monitoring Officer in his role in facilitating the legal and proper discharge of the Council's business.

2. **Recommendations (for decision by Council)**

- 2.1 **That Standards Committee approve the Protocol and recommend its formal adoption by the Council for inclusion in the Council's Constitution. (Appendix A)**

REASON: Best practice encourages the adoption of such a Protocol for inclusion in the Constitution.

3. **Consultation with Ward Councillors**

- 3.1 Not applicable

4. **Policy Context (including Relevant Previous Decisions)**

- 4.1 The remit of the Monitoring Officer responsibilities has been widened following the introduction of the new ethical framework under the Local Government Act 2000. The establishment of the Standards Committee and the new responsibilities for local investigation has added to the roles of the Monitoring Officer.

5. **Relevance to Corporate Priorities**

5.1 No direct relevance

6. **Background Information and options considered**

6.1 The Council is required under section 5 of the Local Government and Housing Act 1989 to appoint a statutory Monitoring Officer. Key responsibilities under the 1989 Act include:

- i) reporting on contravention/likely contravention of any enactment or rule of law;
- ii) report on maladministration or injustice where the Ombudsman has carried out an investigation

6.2 The responsibilities ascribed to the Monitoring Officer have now been expanded following the introduction of the Local Government Act 2000, Part III which deals with ethics and probity. Key additional responsibilities include:

- i) Investigation into misconduct and advice on the determination of complaints
- ii) Advice to the Standards Committee
- iii) Maintenance of the registers of Interests, gifts and hospitality
- iv) Advice on interpretation of the Code of Conduct
- v) Liaison with the Standards Board for England and Ethical Standards Officers.

6.3 The attached Protocol has been prepared to demonstrate that the Council has arrangements in place to ensure the Monitoring Officer can carry out his responsibilities with the support of Members and Officers. The Protocol sub-divides the responsibilities of the Monitoring Officer into three categories:

- i) reports and decision-making

The Protocol highlights the need for early consultation by Executive Directors and Directors with the Monitoring Officer on policy changes and possible problems for the authority. There are also requirements in relation to record keeping.

- ii) Legality, vires and constitutional issues

This part of the Protocol highlights the Monitoring Officer's role in ensuring the authority acts within its powers and the law.

- iii) Ethics and Probity

This section deals with the role of the Monitoring Officer in Members Conduct following the introduction of the Code of Conduct for Members.

7. **Consultation**

7.1 Not applicable

8. **Finance Observations**

8.1 There are no financial implications in this report.

9. **Legal Observations**

9.1 Are included within the body of this report.

10. **Conclusion**

10.1 It is proposed that the Protocol for Monitoring Officer Responsibilities be approved by Standards Committee and then adopted by full Council for inclusion in the Constitution.

11. **Background Papers**

11.1 Local Government Act 2000

11.2 Local Government and Housing Act 1989

12. **Author**

12.1 Alison Vydulinska – Corporate Solicitor 020 8424 7629 e-mail:
Alison.Vydulinska@Harrow.gov.uk

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LONDON BOROUGH OF HARROW

PROTOCOL FOR MONITORING OFFICER RESPONSIBILITIES

1. Introduction

- 1.1 This protocol describes the principal functions of the Monitoring Officer and the way in which the Council expects him or her to discharge those functions.
- 1.2 The Monitoring Officer is a statutory appointment required by section 5 of the Local Government and Housing Act 1989. The current responsibilities of the Monitoring Officer rest with the Borough Solicitor, Gerald Balabanoff. His deputy, should he be unable to act, is Hugh Peart, the Property Services Solicitor.

2. Roles and responsibilities

- 2.1 The following arrangements and principles will operate between Members and officer colleagues on the one hand, and the Monitoring Officer on the other.
- 2.2 Reports and decision-making
 - (a) If not a member of the Corporate Management Team, the Monitoring Officer will have advance notice of those meetings, their agenda and reports, and the right to attend and speak;
 - (b) The Monitoring Officer or his staff will be provided with copies of all reports to Members in good time (i.e. at least 3 days) before the reports are submitted for printing in order that legal observations can be included;
 - (c) Officers are obliged to incorporate the comments of the Monitoring Officer into reports. If this is not observed the Monitoring Officer reserves the right to issue a separate report to Members explaining his views on the matter for consideration;
 - (d) Officers and Members must alert the Monitoring Officer to any informal or formal meeting between Cabinet Members or Committee Chairs and senior officers where procedural, vires or constitutional issues are likely to arise;
 - (e) The Monitoring Officer will have the right to attend any meeting of the Council, featuring either Members or officers, (including the right to be heard) before any binding decision of the Council is made;

- (f) The Monitoring Officer will act as the Proper Officer in relation to the preparation, publication and retention of records of decisions taken by or on behalf of the Executive;
- (g) As required by statute, the Monitoring Officer will report to Council as necessary on the staff, accommodation and resources he requires to discharge his statutory duties;
- (h) Directors and Heads of Service will lodge their internal schemes of officer delegation with the Monitoring Officer at the beginning of each financial year;
- (i) In consultation with the Mayor, Cabinet, Standards Committee and the Standards Board for England, the Monitoring Officer may defer the making of a formal report under section 5 of the Local Government and Housing Act 1989 (a Monitoring Officer Report), where another investigative body is involved.

2.3 Legality, vires and constitutional issues

- (a) Senior Officers will alert the Monitoring officer to all emerging issues of concern including legality, vires and constitutional issues;
- (b) The Monitoring Officer will meet regularly with the Head of Paid Service (Chief Executive) and the Chief Finance Officer (the Section 151 Officer) to consider and recommend action in connection with corporate governance issues and other matters relating to legal, procedural, propriety or other constitutional issues that are likely to, or do, arise;
- (c) The Monitoring Officer will be available for Members and officers to consult on any issues relating to the Council's legal powers, possible maladministration, propriety and probity issues and for advice on the Constitution;
- (d) The Monitoring Officer has the power to agree a local resolution to any complaint of maladministration, subject to a subsequent report to the Standards Committee;
- (e) After consulting with the Chief Executive and Chief Finance Officer, the Monitoring Officer will have the right to notify the Police, the Council's Auditors and other regulatory agencies of his concerns in respect of any matter and to provide them with the documents to assist them in their statutory functions;

2.4 Ethics and probity

- (a) The Monitoring Officer will develop good working relationships with the Chair of the Standards Committee;
- (b) The Monitoring Officer will support the Standards Committee in its mission to maintain high standards of ethics and probity;

- (c) The Monitoring Officer will develop good working relationships with the Ombudsman, the District Auditor and the Standards Board for England;
- (d) In carrying out investigations of any kind, the Monitoring Officer will have unqualified access to any information held by the Council and to any officer who can assist in the discharge of his functions;
- (e) The Monitoring Officer will be expected to support the Standards Committee in the local determination of complaints against Members where allegations of misconduct are referred to him by the Standards Board for investigation, or where investigations are referred for local determination by an Ethical Standards Officer;
- (f) The Monitoring Officer may investigate allegations of misconduct by Members in the absence of a written complaint received by the Standards Board for England, and if appropriate will make a written report to the Standards Committee, unless the Chair of the Standards Committee, the Chief Executive and the Monitoring Officer decide that a report is unnecessary;
- (g) The Monitoring Officer will be responsible for preparing a training programme for Members' on the ethical framework;
- (h) The Monitoring Officer will maintain the registers of Members' Financial and other Interests, Gifts and Hospitality;
- (i) The Monitoring Officer will investigate any application for a dispensation and report as necessary to the Standards Committee for decision;
- (j) Officers and Members will alert the Monitoring Officer to any issues of concern to the Council concerning ethics and probity;
- (k) The Monitoring Officer has the right to obtain legal advice, either internally or from an independent barrister or solicitor, on any matter, which he believes, may be a reportable incident. He shall be given sufficient resources to enable this to be done;
- (l) The Monitoring Officer will be able to appoint an independent legal adviser to assist the Council in relation to an investigation where a Member is alleged to be in breach of the Code of Conduct.

3. Conflicts

- 3.1 Where the Monitoring Officer receives a complaint or becomes aware of a potentially reportable issue or event relating to a matter on which he has already advised, the matter shall be dealt with by the Deputy Monitoring Officer who will report to the Chief Executive and/or authority as appropriate.

4. Delegation

4.1 The Monitoring Officer will have the power to delegate any part of his role in relation to investigations under Part III of the Local Government Act 2000 to another appropriately qualified officer within Harrow Legal Services or externally

5. Sanctions for breach of this Protocol

5.1 Complaints about a breach of any matters in this Protocol by Members will be referred to the Standards Committee of the Council and the relevant Leader and/or Chief Whip of the Party Group concerned.

5.2 Complaints about breaches of this Protocol by officers will be referred to the relevant Chief Officer and/or the Chief Executive.

Summary of Monitoring Officer functions

Function	Source of Function
1. Report on contravention or likely contravention of any enactment or rule of law.	Section 5 Local Government and Housing Act 1989.
2. Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 Local Government and Housing Act 1989.
3. Appointment of Deputy Monitoring Officer.	Section 5 Local Government and Housing Act 1989.
4. Report on resources needed to undertake Monitoring Officer functions.	Section 5 Local Government and Housing Act 1989.
5. Investigate misconduct in compliance with Regulations and directions of Ethical Standards Officers (ESO).	Regulations under Section 66(1) and 66(6) Local Government Act 2000. Direction from ESO in individual cases.
6. Establish and maintain registers of member's interests and gifts and hospitality.	Section 81 Local Government Act 2000 and Members' Code of Conduct.
7. Advice to Members on interpretation of the Code.	Members' Code of Conduct
8. Key role in framework for local determination of complaints. Advice to Members, officers and the public on the operation of the Code and how alleged breaches should be investigated.	Statutory guidance para. 8.20 Proposed Regulations under section 66 of the LGA 2000 (awaited)
9. Liaison with Standards Board for England and Ethical Standards Officers.	Regulations under sections 54(4), 57(3) and 66 of the LGA 2000.
10. Compensation or remedy for maladministration.	S.92 Local Government Act 2000.
11. Advice on vices issues, maladministration, financial impropriety, probity, policy framework and budget issues to all members.	ODPM guidance.

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Meeting:	STANDARDS COMMITTEE
Date:	7 th October 2003
Subject:	Complaints against Councillors: Local Determination of complaints referred from the Standards Board for England
Key decision:	N/A
Responsible Chief Officer:	Gerald Balabanoff – Borough Solicitor
Relevant Portfolio Holder:	N/A
Status:	Part 1
Ward:	N/A
Enclosures:	Procedure for the Standards Committee Panel

1. Summary/ Reason for urgency (if applicable)

- 1.1 The Council is required to agree a procedure for making local determinations of complaints against councillors alleged to have breached the Code of Conduct following publication of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 which came into force on 30th June 2003. The Standards Board for England has issued guidance to assist Standards Committees in drawing up their procedures, and that guidance has been taken into account in the drafting of the Harrow procedure. This report outlines the proposed procedure for dealing with referrals from Ethical Standards Officers following completion of an investigation.

2. Recommendations (for decision by Council)

2.1 That the Committee recommend that Council agree

- (i) to establish a panel of 5 members comprising both independent members and one from each of the main political parties to hear local determinations;**
- (ii) that the quorum for the panel hearing a local determination be 3, including at least one independent member;**
- (iii) that the panel hearing a local determination be chaired by an independent member;**
- (iv) that the independent member to fulfil the function in (iii) be appointed by the committee;**
- (v) that members attending a panel be required to vote on a local determination and not permitted to abstain;**
- (vi) the procedure at Annex 1.**

REASON: The Standards Board for England requires all Councils to establish procedures for Standards Committees to determine referrals from Ethical Standards Officers.

3. Consultation with Ward Councillors

3.1 N/A

4. Policy Context (including Relevant Previous Decisions)

4.1 The Government has now issued the first part of the Section 66 Regulations (under the Local Government Act 2000) enabling Ethical Standards Officers (ESOs) of the Standards Board for England (SBE) to refer allegations to Standards Committees for local determination.

4.1 The Local Determination Regulations do not provide a complete framework for dealing with local determination of complaints against local councillors. The Regulations issued thus far only allow investigations completed by ESOs to be referred to local Standards Committees for a decision about whether the allegation against the councillor is made out, and if so, for the determination of the appropriate sanction. The Regulations enabling Monitoring Officers to carry out investigations themselves on references from the Standards Board for England are not anticipated until later in 2003.

5. Relevance to Corporate Priorities

5.1 No direct relevance.

6. Background Information and options considered

6.1 HLS Briefing Note 1 for the Standards Committee issued in September 2003 outlines the main points of the new Regulations. The SBE has also issued Guidance for Councils on how they should respond to the Regulations, and committee members have received this guidance. HLS Briefing Note 2 for the Standards Committee issued in September 2003 sets out the main points of this guidance.

- 6.2 Ethical Standards Officers may now begin to refer completed investigations to local Standards Committees and it is therefore important that the Council establish the procedures for dealing with any ESO investigations which may be referred to the Committee as soon as possible.
- 6.3 Once further Regulations are issued dealing with local investigations it will be necessary to add to them to incorporate rules for undertaking a local investigation, as well as a local determination.
- 6.4 The proposed procedure is attached for Members to consider. Some key points for consideration are outlined below:

6.4.1 The hearing Panel

An amendment to the Local Government Act 2003 allows delegation of functions from the Standards Committee (previously this was not legally possible).

It is recommended that the Committee agree to delegate the hearing of local determinations to a Panel, and that the Standards Committee Hearing Panel be established with a Membership of 5 (i.e. the two independent members and one member from each of the main political groups).

It is recommended that the quorum for the Panel hearing the determination should be 3, including one independent member.

6.4.2 Chairing the Panel

The Guidance from the SBE strongly recommends that the Chair of the Panel hearing the determination should be an independent member. This is designed to ensure that the Panel can be seen to be led by an impartial person. Authorities who have already prepared their procedures have adopted this advice. It is therefore proposed that the chair of the Panel will be one of the two independent members of the Standards Committee, appointed by the Standards Committee for that purpose. It is suggested that this person be appointed now and that the Chair is then nominated annually by the Committee at its first meeting following the Annual Council Meeting.

6.4.3 Voting

Members of Committees of the Council are able to abstain from decisions if they wish. The nature of any Panel meeting to hear a determination under the Code of Conduct is fulfilling a distinctly different role to that of other committees. Rather than deciding matters of policy, it is acting in a quasi-judicial manner, and as such it is not considered appropriate for members of the Panel to abstain. All members of the Panel will therefore be required to vote on a determination.

6.4.4 Preparing the case for the Panel – the role of the legal advisor.

The Guidance from the SBE necessarily covers the process for determinations in a fairly procedural way – the Panel collect all the information that people want to put before it and then the meeting is held and a determination made. However in the same way as a tribunal may seek to give direction to the manner in which a hearing will be managed there must be room for a similar level of direction in our local procedure. Indeed the Guidance states that the Panel may decide to limit the witness evidence. Thought needs

to be given to whether there is room for negotiation within the process followed locally to ensure that all relevant information is put before the Panel, but in the most effective and efficient way. It is therefore proposed that the Chair, with assistance from the legal advisor to the Panel will provide a clear framework for the hearing as proposed in Paragraph 5 of the proposed procedure.

6.4.5 Confidentiality

The Regulations add some additional categories of exempt information to Schedule 12 of Part V of the Access to Information rules, however it is important to note that the guidance from the SBE is that the starting point for all hearings is that they should be held in public session. Provision exists for part of the hearing to be held in private if necessary, and the deliberations of the Panel may also be in private. The procedure requires the ESO and/ or the member who is the subject of the allegation to make a request for a private hearing or for certain documents to be withheld from the public, and the procedure requires such a request to be accompanied by a reason set out in that schedule. The legal advisor to the Panel will advise the Chair on the validity of any such requests, and the Panel will have the final say in cases of disagreement.

6.4.6 Appeals

Appeals against the determination and any sanction imposed by the Panel must be made to the Adjudication Panel of the SBE. In such circumstances the Panel will assist the President of the Adjudication Panel in the preparation of information as requested. Whether to appeal is a matter for the Member concerned, but it is recommended that if requested, Harrow Legal Services provide general advice to any member considering this action. Again this advice will not amount to representation for the Member, but will be designed to assist in producing an efficient outcome and minimising any adverse impact on the authority.

6.4.7 The remit and allocation of responsibilities between legal officers.

There are a number of roles for legally qualified officers within the local determination procedure.

First, that of legal adviser to the Panel. This person may be the Monitoring Officer or a person appointed by him. The SBE recommend that the Monitoring Officer should be the legal adviser to the Panel. Their role is to ensure the Panel is appropriately advised throughout the process. This includes the need to ensure all papers from both parties are received and in proper order, assisting the Chair to distil the areas of disagreement between the parties, and advise on any ruling relating to which, if any, parts of the meeting or documentation should be withheld from the press and public.

Second that of 'Reporting Officer'. This person is appointed by the Monitoring Officer (and he may appoint himself to the role) in essence, to handle the case for the 'prosecution'. This person will liaise with the ESO and bring together any witnesses and information which provide evidence relating to the allegation against the Councillor. The guidance from the SBE intimates that the Reporting Officer will also liaise with the Councillor who is the subject of the investigation on some matters, but we consider this inappropriate and have suggested that the adviser to the Standards Committee Panel 'holds the ring' and fulfils the liaison role with the two parties. If the Monitoring Officer appoints himself as Reporting Officer he will appoint an alternative legal adviser to the Panel.

It is also necessary to consider whether there is a need for a further legal resource available to give advice to Members who may be involved in the process in some way. It may be that a Councillor not under investigation is or may be called as a witness in the matter. Witnesses cannot be compelled to attend, and such a member may want advice on whether or not to agree to attend. This might normally be provided by the Monitoring Officer and it is suggested that the Monitoring Officer protocol include such a role. Clearly if the Monitoring Officer is the Reporting Officer or has a conflict of interest he will need to refer such requests to an alternative legal officer. In addition it should be noted that legal officers might need to advise a member to seek their own external legal advice where necessary.

It may also be common, given the absence of any funds to pay for member representation and no prospect of success in a claim for costs, that the member who the allegation is laid against decides to represent him or herself. Whilst that is a matter for the member, it may be helpful for the effective running of the process if general procedural advice could be provided to that member in preparing the case. Again this may best be done by the Monitoring Officer, but it may be appropriate to appoint an alternative legal officer, who is not the Reporting Officer and not the legal adviser to the Panel, who is able to provide general advice. Note that it is not being suggested that the officer provide representation for the member, rather, general advice about how to identify the key issues in the case, deadlines for responses, advice on giving oral evidence or how to question witnesses etc.

7. **Consultation**

7.1 Not applicable

8. **Finance Observations**

8.1 There is no budget provision for any costs that may arise if external support is required to carry out any investigation or for any other costs that may arise.

9. **Legal Observations**

9.1 Contained in the body of the report.

10. **Conclusion**

10.1 The Standards Committee must have a procedure in place to deal with referrals to it from an Ethical Standards Officer. When further regulations are issued allowing the Standards Committee to carry out investigations the procedure will need to be amended to explain how that will be done.

10.2 Members should note however that the Standards Committee can nevertheless oversee ethical issues and inquire into complaints. The case of Broadland District Council ex parte Lashley confirmed that it was within the power of a local authority Standards Committee to oversee ethical issues and inquire into complaints concerning member conduct. The Court of Appeal ruled that such a committee fell within the powers of the Council under s111 of the Local Government Act 1972 which provides an ancillary power to do anything which is calculated to facilitate or conducive or incidental to the carrying out of its functions.

- 10.3 The Court of Appeal confirmed that the powers of the Committee within the current legislative framework are limited to the naming and shaming of individual members where conduct is regarded of a breach of the Code; removal from any office, appointment or committee or sub-committee in certain circumstances; and the possible removal of facilities (e.g. copiers) as long as such sanctions did not prevent the member from undertaking his or her role as a democratically elected member.
- 10.4 Therefore even prior to receiving the local investigation powers, the Committee does have some powers of inquiry.

11. **Background Papers**

- 11.1 The Local Authorities (Code of Conduct) (Local determination) Regulations 2003
11.2 Standards Committee Determinations – Guidance for Monitoring Officers and Standards Committees – Standards Board for England.
11.3 Local Government Act 2003
Available from the report author.

12. **Author**

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LONDON BOROUGH OF HARROW

Dealing with the local determination of allegations made about Council members and co-optees under the Code of Conduct.

Procedure for the Standards Committee Hearing Panel

1. Introduction

This procedure will only apply to determinations made by the Standards Committee Hearing Panel where an investigation has been completed by an Ethical Standards Officer (ESO) of the Standards Board for England (SBE) and referred to the Standards Committee.

The procedure applies to complaints about the conduct of anyone who is required to sign up to and comply with the Code of Conduct as set out in Part 4 of the Council's Constitution. This includes all councillors, co-optees with voting rights and the independent members of the Standards Committee.

Where an investigation is referred to the Standards Committee by an ESO, the Monitoring Officer must ensure that the Standards Committee considers the report. The Standards Committee will meet to decide what action to take as a result of the report by way of a formal Hearing Panel which follows this procedure. Any departure from the procedure will only be possible if the legal adviser to the Hearing Panel has notified the Member who is the subject of the report of the proposed changes and the reasons for them.

For the purposes of this procedure, the person who makes the complaint about a Councillor or co-optee will be described as the 'Complainant', and the person about whom the complaint is made will be referred to as 'the Member'.

There are a number of legal officer roles, which are required to assist the Hearing Panel to determine the matter referred by the ESO. These roles are:

1.2 The Monitoring Officer

The Monitoring Officer will ensure that the overall conduct of the matter is dealt with effectively in the interests of all parties concerned. The Monitoring Officer may also adopt the role of Reporting Officer or legal adviser to the Hearing Panel. If the Monitoring Officer assigns himself as Reporting Officer, he will ensure that the deputy Monitoring Officer takes responsibility for ensuring the effective overall conduct of the matter and that an appropriate officer is appointed as legal adviser to the Hearing Panel.

Where appropriate, the Monitoring Officer may arrange for procedural advice to be given to a Member who wishes to make an oral representation to the Panel.

1.3 The Reporting Officer

The Reporting Officer is, in effect, the ‘prosecutor’ at the Hearing Panel. The Monitoring Officer may choose to be the Reporting Officer in any particular case, and if so, he will ensure that all other legal roles are delegated to an appropriate officer and that the Deputy Monitoring Officer takes responsibility for ensuring the effective overall conduct of the matter .

The Reporting Officer may, where appropriate, make representations to the Panel on behalf of the Complainant.

1.4 The legal adviser to the Hearing Panel

This role of this person is to

- make sure the Standards Committee understand their powers and procedures;
- make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;
- make sure that the Member understands the procedures that the Committee will follow;
- provide advice to the Committee during the hearing and their deliberations; and
- help the Committee produce a written decision and a summary of that decision.

The Monitoring Officer may be the legal adviser to the Hearing Panel, but if so he cannot be the Reporting Officer.

2. Appointment of a Reporting Officer on receipt of the ESO’s report

Upon receipt of the ESO’s report, the Monitoring Officer will appoint a Reporting Officer. The Reporting Officer will be responsible for taking charge of providing the evidence against the Member to the Hearing Panel.

The Reporting Officer may be the Monitoring Officer, or another appropriate officer. The Reporting Officer will, if at all possible, be a Harrow Council Officer, but in appropriate circumstances the Monitoring Officer may appoint an officer of another authority, or an independent consultant with appropriate qualifications.

3. Notifying the Member and the Complainant.

Within 5 working days of receiving the ESO’s report, the Monitoring Officer will send a copy of the report to all Members of the Standards Committee, the Member and where possible and appropriate, to the Complainant. The report will, at this stage, be provided on a confidential basis, and an undertaking of confidentiality will be obtained from the Complainant, the Member, and where needed, the Standards Committee.

4. Preparing for the hearing

4.1 Obtaining a response from the Member

When notifying the Member of the complaint against him or her and providing them with the report under Rule 3, the legal adviser to the Hearing Panel will ask the Member for a written response, within fifteen working days, stating whether he or she:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- wants to be represented, at their own expense, at the hearing by a barrister, solicitor or any other person;
- wants to give evidence to the Hearing Panel, either verbally or in writing;
- wants to call any relevant witnesses to give evidence to the Hearing Panel, and if so, who they are;
- wants any part of the hearing to be held in private, explaining the reasons;
- wants any part of the ESO's report or other relevant documents to be withheld from the public, explaining the reasons.

The legal adviser to the Hearing Panel will also ask the Member to advise him or her, in their response, of all those matters within the ESO's report which he or she disputes. The legal adviser to the Hearing Panel will notify the Member that the Panel has the power to refuse to hear any new areas of dispute raised at the hearing but not notified prior to it, or may adjourn the hearing to enable the Reporting Officer to respond to them.

4.2 Upon receipt of a response from the Member

The response of the Member shall be sent to the Reporting Officer as soon as the legal adviser to the Hearing Panel receives it. The Reporting Officer will forward the response of the Member to the relevant ESO, who will be invited to comment upon it within 15 working days, and specifically say whether or not he or she:

- wants to attend the hearing;
- wants to call relevant witnesses to give evidence at the hearing;
- wants any part of the hearing to be held in private (by virtue of Part VA of the Local Government Act 1972), and the reasons for this;
- wants any part of their report or other relevant document to be withheld from the public (by virtue of Part VA of the Local Government Act 1972) and the reasons for this.

5. Calling a meeting of the Standards Committee Hearing Panel

Upon receipt of the ESO's response from the Reporting Officer, the legal Adviser to the Hearing Panel will forward the responses of the Member and the ESO to the Chair of the Hearing Panel.

Although the Member, the ESO and the Reporting Officer are entitled to request that any witness be called to give evidence, the Chair of the Hearing Panel may limit the number of witnesses if he or she believes the requests of any party are unreasonable and/or that some witnesses will be repeating evidence which will be given by earlier witnesses and/or will not provide any evidence at all to help the Panel reach a decision. The Chair may also call any

additional witnesses who he or she believes would assist the Hearing Panel in reaching a decision.

The Chair of the Hearing Panel will, in consultation with the legal adviser to the Panel:

- confirm the main facts of the case that are agreed between the ESO and the Member;
- confirm the main facts of the case that are not agreed between the ESO and the Member;
- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing, specifying which parts of the hearing, if any, will take place in private with reasons; and
- request the Committee Administrator to provide this information and, subject to paragraph 5.2 below, the Agenda to everyone involved in the hearing at least 8 clear working days before the date of the hearing. (Confidentiality undertakings for receipt of the papers will be obtained from any recipients for whom the Chair considers this appropriate.)

The Agenda papers will include the following information:

- the date, time and place of the hearing;
- the summary of the allegation;
- a list of the main facts of the case which are agreed;
- a list of the main facts of the case which are not agreed;
- a note about whether the Member and/or the ESO will attend the hearing and give evidence;
- a list of witnesses, if any, who will attend the hearing and give evidence; and
- an outline of the proposed procedure for the hearing (i.e. a set of these rules)

5.2 Excluding the press and public from the Hearing Panel

The meeting of the Hearing Panel will be open to the press and public unless confidential information under Part VA of the Local Government Act 1972 and Regulations is likely to be disclosed.

The Hearing Panel has discretion to decide whether or not to exclude the press and public from the meeting if exempt information as defined in Part VA of the LGA 1972 and regulations will be discussed. Where the legal adviser to the Hearing Panel, in consultation with the Chair of the Panel, considers that the ESO's report and/or any of the written statements in response are likely to disclose exempt information and as a result it is likely that the hearing Panel will, when considering these papers, not be open to the press and public, he or she shall instruct the Committee Administrator not to provide copies of these papers to the press and public, and not to allow their inspection prior to the meeting.

6. Convening the Hearing Panel

When the initial report is received from the ESO, the legal adviser to the Hearing Panel will request that the committee administrator for the Standards Committee arrange for a meeting of the Panel, and, following consultation with the Chair of the Panel, indicate the preferred

time, place and date of the meeting. The meeting must take place within three months from the date that the authority receives the ESO's report. Where possible, the Hearing Panel will meet during the day and will aim to complete the hearing in one sitting (i.e. avoiding the need to reconvene on another date part way through hearing the evidence).

7. The composition and method of the Hearing Panel

The Hearing Panel shall be chaired by an independent member of the Standards Committee selected by the Standards Committee, or if none is appointed, by the Chair of the Standards Committee.

The Hearing Panel shall comprise 5 members of the Standards Committee, and shall include both independent members. The remaining 3 places shall be filled by a member of the Standards Committee from each of the three main political groups selected by the Chair.

The quorum for the Panel shall be 3, and must include at least one independent member.

Where a member selected to sit on the Hearing Panel cannot attend, a reserve shall be approved by the Chair of the Panel. The reserve member shall be fully briefed about the complaint under consideration by the legal adviser to the Panel.

The Hearing Panel shall decide whether the grounds for complaint are upheld on the balance of probabilities i.e. on the evidence presented to the Panel in writing and orally (if any), it is more likely than not that the Member is in breach of the Code of Conduct.

Each member of the panel shall have one vote and abstentions will not be permitted.

The purpose of the Hearing Panel is to examine and test the evidence produced by the ESO in their report. This requires an inquisitorial approach by the Hearing Panel i.e. the need to seek information in order to establish whether or not the Member is in breach of the Code of Conduct by examining all the written evidence and questioning any relevant witnesses.

The Hearing Panel may at any time seek legal advice from the legal adviser to the Panel. Such advice will be given in the presence of the Reporting Officer and the Member, though the press, public and others present at the hearing may be excluded while this advice is given.

8. Agenda for and procedure at the Hearing Panel

The Agenda for the Meeting shall be as follows:

- Quorum
- Introductions
- Declarations of interest
- Consideration of whether to adjourn or proceed in the absence of the Member if they are not present

- Representations with reasons from the Reporting Officer and/or the Member if either consider that the hearing or any part of it should exclude the press and public under Part VA of the Local Government Act 1972, and determination of this by the Panel.
- Explanation of how the hearing will be run.

Where the panel decides that it will not exclude the press and public, the Committee administrator shall at that point provide copies of the agenda and reports to any press and public that are present.

The procedure for dealing with the report about the Member shall be as follows, subject to the Chair of the Panel being able to make any change to it that he or she thinks appropriate to enable a fair and effective hearing:

- Examination of the reports and written representations

The Panel will examine the ESO's written report, the Member's response to it and any further response from the ESO. The Panel may ask the Reporting Officer and/or the Member questions about the contents of their reports.

If there is no disagreement about the facts, the Committee can move on to consider its findings (paragraph 9 refers).

- Examination of oral evidence

Where the facts of the case are not agreed, the Reporting Officer will be asked to make any representations to support the findings of fact in the report relevant to the areas of disagreement, by calling witnesses as agreed by the Chair of the Panel (Rule 5 refers)

Questions may be asked of the Reporting Officer at any point. The Member, the Complainant or their representatives may challenge the oral evidence being presented by directing their questions through the Chair (i.e. they may not ask questions of the Reporting Officer directly).

The Member will then be asked to make any representations to support his or her version of the disputed facts in the ESOs report, calling supporting witnesses as agreed by the Chair of the Hearing Panel (Rule 5 refers).

Questions may be asked of the Member at any point. The Complainant, the Reporting Officer or their representatives may challenge the oral evidence being presented by directing their questions through the Chair (i.e. they may not ask questions of the Member direct).

Where the Member disputes any matter in the ESO's report but which he or she has not given prior notice of his or her intention to dispute, the Reporting Officer must draw this to the attention of the Panel. The Panel may then decide:

- not to hear the fact(s) in dispute;
- to hear the fact(s) in dispute but invite the Reporting Officer to respond; or
- to adjourn the meeting to enable the Reporting Officer to investigate and report on the disputed fact(s).

- Representations on sanctions

The Member will have an opportunity to make a statement in mitigation of any sanction which the Hearing Panel may impose in the event that they find the complaint to be made out.

9. The decision of the Hearing Panel

The Hearing Panel will retire into private session to consider their findings. At any time they may return to ask for questions of the Reporting Officer or the Member, or to seek legal advice. They may find one of the following:

- That there is no evidence of any failure by the Member to comply with the Code of Conduct;
- That the Member has failed to comply with the Code of Conduct but that no action needs to be taken;
- That the Member has failed to comply with the Code of Conduct and should be:
 - censured; or
 - have his or her access to council premises and resources restricted for a period up to a maximum of three months¹;
 - be suspended or partially suspended for a maximum of three months; or
 - be suspended or partially suspended for a maximum period of three months or until such time as the Member submits a written apology or undertakes any training or conciliation specified by the Panel.

In deciding what penalty to set the Panel will consider all relevant circumstances including the mitigation statement of the Member and any guidance produced by the Standards Board for England.

The Hearing Panel will return from private session to enable the Chair to announce the decision of the Panel and the reasons for it.

A suspension or partial suspension will take effect immediately unless the Panel decides that it should take effect on some future date, for example to avoid the penalty spanning the summer recess. The starting date for the penalty must commence within six months of the hearing.

The Hearing Panel will then consider in open session whether any action needs to be taken by the authority as a result of the finding, for example reviewing any decision, policy or practice of the authority which was the subject of the breach of the Code of Conduct; any action needed to prevent or deter further breaches of the Code of Conduct or providing recompense to any person who has suffered detriment as a result of the breach.

9.1 Costs

¹ When setting this penalty the Panel must ensure that such restrictions will not unnecessarily restrict the Member's ability to carry out his or her responsibilities as an elected or co-opted member.

The Hearing Panel will not award costs of any kind to a member who successfully defends a complaint. The law does not currently give the Council the power to award costs.

10. Confidentiality and the disclosure of information

No member of the authority shall disclose any information he or she has obtained in the course of an investigation or as a result of this procedure unless:

- the disclosure is made to enable to Reporting Officer to carry out his or her functions, or to enable the Standards Committee to carry out its functions in relation to the matter;
- the disclosure is made to enable the appeal tribunal of the Adjudication Panel to discharge its functions;
- the person to whom the information relates has consented to the disclosure;
- the disclosure is made following receipt of a statutory requirement for disclosure;
- the information has previously and lawfully been disclosed to the public;
- the disclosure is made to the district auditor or the Audit Commission in relation to any function specified in the Audit Commission Act 198; or
- the disclosure is made in consequence of criminal proceedings

11. Appealing the decision of the Hearing Panel

Where the Hearing Panel has determined that the Member has failed to comply with the Code of Conduct, the Legal Adviser to the Panel shall inform the Member of his or her right to apply for permission to appeal against the finding to an appeal tribunal of the Adjudication Panel (of the Standards Board for England). The Legal Adviser to the Panel will also advise the Member of the deadline for submitting an appeal, along with any other relevant information.

12. Notice of findings

The legal adviser to the Hearing Panel will make a short written statement of the decision available on the day of the hearing, or if the hearing commences after 7.30pm, on the morning following the hearing.

A full written draft of the decision will be prepared on the day following the hearing, finalised in consultation with the Chair of the Hearing Panel and circulated to the Member, the Complainant (where appropriate), the relevant ESO, the Council's Standards Committee and any other authority concerned within two weeks of the hearing. The decision will follow the format recommended by the Standards Board for England.

At the same time, the Legal Adviser to the Panel Hearing shall arrange for a summary of the findings to be published in two newspapers circulating in the Council's area and on the Council's web site.

12.1 Where the Hearing Panel decide that there has been no breach of the Code of Conduct, the notice specified above shall:

- state that the Hearing Panel found the Member had not failed to comply with the Code of Conduct and shall give reasons for that finding; and
- not be published in local newspapers if the Member requests it.

12.2 Where the Hearing Panel decide that the Member has not complied with the Code of Conduct, but also decides that no action should be taken, the notice shall:

- state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct, but that no action need be taken in respect of that failure;
- specify the details of the failure;
- give reasons for the decision reached; and
- state that the Member concerned may apply for permission to appeal against the determination to the President of the Adjudication Panel.

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

- state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct;
- specify the details of the failure;
- give reasons for the decision reached;
- specify the sanction imposed; and
- state that the Member concerned may apply for permission to appeal against the determination to the President of the Adjudication Panel.

Copies of the agenda, reports and minutes of the hearing as well as any background papers, apart from any documents or parts of documents which relate to parts of the hearing which were held in private, will be available for public inspection for six years after the hearing.

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Standards Committee determinations

FORM A

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

Member's response to the evidence set out in the ESO's report

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

Please attach separate sheets if necessary

FORM B

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

Other evidence relevant to the allegation

Paragraph number	Details of evidence
1	
2	
3	
4	
5	

Please attach separate sheets if necessary

FORM C

Please set out below, using the numbered paragraphs, any factors that the Standards Committee should take into account if it finds that a member has failed to follow the Conduct.

Representations to be taken into account if a member is found to have failed to follow the Code of Conduct

Please note that no such finding has been made yet.

Paragraph number	Factors for the Standards Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension
1	
2	
3	
4	
5	

Please attach separate sheets if necessary

Standards Committee determinations

FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes

<p>1</p>	<p>The proposed date for the standards Committee hearing will be notified shortly. Are you planning to go to the hearing?</p> <p>If 'No', please explain why.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reason:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>2</p>	<p>Are you going to present your own case?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
<p>3</p>	<p>If you are not presenting your own case, will a representative present it for you?</p> <p>If 'Yes' please state the name of your representative.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Name:</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>4</p>	<p>Is your representative a practising solicitor or barrister?</p> <p>If 'No', please go to question 5.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>5</p>	<p>Does your representative have any connection with the case?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

6	<p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
7	<p>Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
8	<p>Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)?</p> <p>If 'Yes' please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
9	<p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons referring to Part VA of the Local Government Act 1972.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
10	<p>Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If 'Yes', please give reasons referring to Part VA of the Local Government Act 1972.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Please attach separate sheets if necessary.

Standards Committee determinations

FORM E

Details of proposed witness to be called

Please tick the relevant boxes

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

WITNESS 2			
a	Will the witness give evidence about the allegation? If 'Yes' please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Outline of evidence:
	b	Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed? If 'Yes' please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/> No <input type="checkbox"/> Outline of evidence:
WITNESS 3			
a	Will the witness give evidence about the allegation? If 'Yes' please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Outline of evidence:
	b	Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed? If 'Yes' please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/> No <input type="checkbox"/> Outline of evidence:

Please attach separate sheets if necessary.

HARROW LEGAL SERVICES

BRIEFING Note 1 for the Standards Committee

SECTION 66 REGULATIONS

The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 were laid before Parliament on 6th June and came into force on 30th June 2003.

Part 2 of the Regulations set out the rules that apply where an Ethical Standards Officer (ESO) carries out an investigation and decides that the matters investigated should be referred to the monitoring officer of the authority concerned (under Section 64(2) of the Local Government Act 2000).

1. Consideration of breaches by the Standards Committee.

The new regulations relate only to the procedure following referral of a completed investigation to the monitoring officer by an ethical standards officer.

1.1 Reports received by the monitoring officer:

First, the ESO must send the report to the monitoring officer. He then must send it to the member who is the subject of the report (for simplicity I will refer to them throughout as ‘the relevant member’) and arrange for the Standards Committee to meet to consider the report.

1.2 Hearings by Standards Committees:

The standards committee must convene to conduct a hearing on the matter. That hearing must:

- follow any guidance issued by the Standards Board for England (SBE) (guidance has been issued by the SBE –see briefing note 2)
- be held within 3 months of the monitoring officer receiving the report;
- be held not less than 14 days after the date on which the monitoring officer sent the report to the relevant member (though it can be earlier if that member agrees);
- the relevant member must be given an opportunity to present evidence in support of their case; and
- must be given the opportunity to make representations at the hearing (either orally, or in writing, either personally or through a representative they appoint to speak on their behalf).

The committee can conduct the hearing using any procedures it considers appropriate.

The committee can arrange for any witnesses they consider appropriate to attend, as can the relevant member.

The Standards Committee can put a limit on the number of witnesses a relevant member may call if they think the number s/he proposes to call is unreasonable.

The relevant member can be represented at the hearing by counsel, a solicitor, or, with the prior consent of the standards committee, any person who the member wants to represent them.

There is no provision to require attendance of an ESO as a witness, however I presume an approach to the SBE to request their attendance could be made.

If the relevant member fails to attend the hearing (and provided they have had notice of it) the Standards Committee may consider the allegation and make a determination in the absence of the relevant member (as long as they do not consider there to be a sufficient reason for the relevant member's failure to attend) or they can adjourn the hearing to another date.

1.3 Extension of the definition of exempt information

The Regulations also extend the definition of exempt information to ensure that standards committees can meet in private session to determine allegations and that case papers can remain confidential if appropriate. That is not to say that meetings should not be held in public, but there is the ability to hold them in private if appropriate; to withhold papers before the hearing and for the committee to retire to consider its findings. The new categories of exempt information for Standards Committees are: where the information relates to the personal circumstances of any person; where it is subject to the obligation of confidentiality; where it relates to matters concerning national security or where it concerns the deliberations of Standards Committees.

1.4 Findings of the Standards Committee

The Standards Committee can make one of the following findings.

That the relevant member:

- a) has not failed to comply with the code of conduct ¹
- b) has failed to comply with the code of conduct but no action needs to be taken
- c) has failed to comply with the code of conduct and a sanction should be imposed.

If the committee make a finding under paragraph c) above, in respect of a person who is no longer a member of the authority they must censure that person.

If the committee make a finding under paragraph c) in respect of a person who is still a member of the authority it must impose one, or any combination, of the following sanctions:

- Censure of the member

¹ The Regulations actually say the Committee can make a finding that they have failed (or not failed) to comply with the code of conduct of the authority **or any other authority concerned** – I do not understand the last point as I am not sure what jurisdiction our committee has over other codes.

- Restriction of the relevant member's access to the premises of the authority and their use of the resources of the authority for a maximum of three months, and providing those restrictions:
 - Are reasonable and proportionate to the nature of the breach;
 - Do not unduly restrict the member's ability to perform his functions and duties as a member
- Partial suspension for a maximum period of three months;²
- Partial suspension of the relevant member for a maximum of three months or until the member submits a written apology of undertakes training or conciliation specified by the Standards Committee
- Suspension of the relevant member for a maximum of three months³
- Suspension of the relevant member for a maximum of three months or until the member submits a written apology of undertakes training or conciliation specified by the Standards Committee.

A standards committee may direct that a sanction imposed commence on any date within a period of six months of its declaration, however if they do not so direct the sanction will commence immediately.

1.5 Notification of the findings of the Standards Committee

As soon as is practical after the standards committee meeting, the committee must give written notice of their finding to:

- The relevant member
- The ESO concerned
- The Standards Committee (I presume this refers to situations whether a sub-committee of the parent committee makes the finding, though a change in the law is needed before this can be done)
- The Standards Committee of any other authority concerned;
- Any person whose allegations gave rise to the investigation.

The Standards Committee must also arrange for a summary of the finding to be published in one or more newspapers circulating in the area, though this is subject to some qualification depending on the outcome of the case.

Where the Standards Committee finds that the relevant member has not failed to comply with the code the 'notice' must state that this is the finding and list its reasons for it. However, the relevant member can request that there be no notice published in a newspaper (and the committee cannot publish it if this is the case).

Where the committee find that the relevant member failed to comply with the code but that no action need be taken, the notice to be published must state this fact and specify the details of the failure to comply; give the reasons for the decision the committee reached and state that the relevant member may apply for permission to appeal against the finding.

² (this means being prevented from exercising particular functions or having particular responsibilities but doesn't include being suspended from being a member of a committee, sub-committee or joint committee of the authority, nor does it include being suspended from the Executive if you are an Executive member);

³ Here, in contrast to the position in relation to a partial suspension, a member may be suspended from membership of the Executive or a committee, sub-committee or joint committee.

Where the committee find that the relevant member failed to comply with the code and that a sanction should be applied, the notice should state this and specify the details of the failure, give reasons for the decision reached by the committee and specify the sanction imposed. The notice should also state that the relevant member may apply for permission to appeal against the funding.

2. Appeals

2.1 Notice of appeals

Where the standards committee make a finding that a relevant member has failed to comply with the code of conduct, that member may write to the president of the Adjudication Panel seeking permission to appeal.

The president of the Adjudication Panel must receive the request for an appeal within 21 days of the member's receipt of notification of a finding by the standards committee. The notice must specify the reasons for the appeal and whether the relevant member consents to the appeal being dealt with through written representations.

The president (or deputy) will decide whether or not to allow an appeal in the absence of the relevant member or other parties unless s/he considers that special circumstances require the parties to attend.

In deciding whether to grant an appeal the president (or deputy) must take into account whether or not there is a reasonable prospect of the appeal being successful (in whole or in part).

Within 21 days of receipt of the appeal request the president (or deputy) must send a notice of the decision to the relevant member, the ESO concerned, the local standards committee, and the person whose allegation gave rise to the investigation. If permission is refused, the notice must also give the reasons for that decision.

2.2 Conduct of appeals

Where the president of the Adjudication Panel gives permission for an appeal hearing, the matter will be referred to the appeals tribunal that shall conduct the appeal.

Where the relevant member has said s/he does not wish the appeal to be decided on written submissions a hearing will be conducted, and the relevant member must be given 21 days notice of the date of the hearing.

Where the relevant member consents to the hearing being conducted by way of written representations it may be conducted in that way or the appeal tribunal may in any event convene a hearing.

The relevant member may appear at the hearing in person or may be represented by counsel, a solicitor or, subject to the prior consent of the appeals tribunal, any person whom he wishes to represent him.

2.3 Composition of the appeals tribunals

The appeals tribunal shall consist of not less than three members (of the Adjudication Panel) appointed by the president. The president or deputy may be a member of the panel.

No member may sit on an adjudication tribunal hearing an appeal relating to a member in whose authority that panel member worked in or served as a councillor in the past 5 years.

Any member of the appeals tribunal who has a direct or indirect interest, or is likely to have such an interest in the subject matter of an appeal must disclose this to the president and may not sit on the appeal tribunal.

The appeals tribunal may use procedures as it sees appropriate in the circumstances.

2.4 Failure of a member to attend an appeal tribunal hearing.

If the relevant member fails to attend the appeal tribunal the tribunal may decide the matter in their absence unless they are satisfied there is sufficient reason for the absence, or they may adjourn the hearing.

Before determining an appeal in the absence of a member, the tribunal should consider any written submissions from the person made in response to the notice of the hearing. Any such reply will be treated as a written submission at the tribunal hearing.

2.5 Outcome of appeals

The appeals tribunal must uphold or dismiss (in whole or part) the finding of the standards committee. It may approve the penalty imposed by the standards committee, or require the standards committee to impose a penalty or require the standards committee to impose a different penalty to that already imposed.

Where the tribunal dismisses the findings of the standards committee the decision taken by the committee (and any sanction imposed) shall cease to have effect from the date of that dismissal.

The appeals tribunal must give written notice of its decision to the relevant member, the ESO concerned, the standards committee of the authority concerned, and the person whose allegation led to the investigation.

The tribunal must also arrange for a summary to be published in one or more papers circulating in the area of the authority concerned.

The standards committee must comply with any decision of an appeals tribunal.

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HARROW LEGAL SERVICES

BRIEFING NOTE 2

STANDARDS COMMITTEE DETERMINATIONS **Summary of the Standards Board for England guidance**

This guidance was issued in July 2003 and under the Regulations, Standards Committees must take it into account. It deals only with the situation where Ethical Standards Officers (ESO) refer a completed investigation report to a Monitoring Officer (MO) for the Standards Committee to determine. The key points of the guidance are summarised below, but do not repeat the description of the Regulations (covered in Briefing Note 1 on the section 66 Regulations).

1. Referrals from ESOs

The Guidance sets out the possible findings available to an ESO on completion of an investigation – one of which is that the matter should be referred to the MO of the relevant authority for local determination. The matters likely to be referred for local determination include matters that are of an entirely local nature and which do not affect broader national issues, and matters that do not appear to require the heavier penalties available to the Adjudication Panel for England.

Nevertheless ESOs will refer matters on their individual merits. So a case of severe harassment or bullying within an authority, although entirely of a local nature, may be inappropriate for referral for local determination.

Only completed investigations will be referred, and it is not open to Standards Committees to re-open the investigation. However, the member who is the subject of the allegations has the right to give evidence to the Standards Committee, and if further evidence becomes available after the completion of the ESOs investigation the Standards Committee may consider it.

When the MO receives the ESO's report s/he must provide a copy to the member who the allegation has been made about (the assumption here seems to be that the ESO will not provide the member with a copy).

2. Scheduling a hearing

The Regulations state that the matter must be heard by the Standards Committee within 3 months of receiving the ESO's report. The Regulations do not say what happens if the Committee do not meet this timetable, but the guidance say that the committee will be failing in its legal duty and may face judicial review proceedings. The committee cannot refer the matter back the SBE so it must be dealt with locally.

The guidance says that unless the case is particularly complicated the Committee should aim to hear the case in one sitting or consecutive sittings of no more than one working day in total. Committees should bear in mind that late night sittings are not conducive to effective decision-making.

3. The pre-hearing process

A pre-hearing process should be established to deal only with procedural issues, namely to:

- Identify whether the member concerned disagrees with the findings of the ESO;
- Decide whether those disagreements are significant to the hearing;
- Decide whether to hear evidence of those disagreements at the hearing;
- Decide whether or not any parts of the hearing should be held in private;
- Decide whether any parts of the ESO's report or other documents should be withheld from the public.

The SBE guidance suggests that the pre-hearing process can usually be done in writing, though a meeting of the Chair, the people involved and their representatives (if any) may be needed in some cases.

4. The Member's response

The MO's administrator should, in consultation with the Chair of the Committee, write to the member concerned to propose a date for the hearing, and set out the hearing procedure and the member's rights. They should also request a written response from the member, within a set time, on the following issues:

- Does the member disagree with any findings of fact in the report and why;
- Do they want to be represented at the hearing;
- Do they want to give evidence orally or in writing;
- Do they want to call witnesses;
- Do they want any part of the hearing to be held in private;
- Do they want any part of the ESO report or other relevant documents to be withheld from the public; and
- Whether they can attend the hearing.

The emphasis on establishing disagreements of fact is designed to enable the Committee to see if any witnesses will be needed. The member concerned should not be allowed to raise new disagreements at the hearing unless there are good reasons for so doing –for example where new evidence becomes available.

The SBE has provided model form to help the member identify findings of fact that s/he may disagree with and outline further evidence for the Committee.

5. An ESO response

The SBE recommend that the Committee also invite the ESO to comment on the member's response within a set time to say whether s/he:

- wants to attend the hearing and give evidence;
- wants to call relevant witnesses;
- wants any part of the hearing to be held in private; and
- wants any part of the report or relevant documents to be withheld from the public.

6. Other witnesses

The Committee can invite other witnesses who it feels may help in determining the case but cannot compel any witness to give evidence.

7. Preparing for the hearing

When the Committee has received the response from the member concerned and the ESO, and at least 2 weeks before the hearing, the Chair in consultation with the legal advisor to the Committee should write to everyone involved to:

- set the date, time and place for the hearing;
- summarise the allegation;
- outline the main agreed facts;
- outline the main facts which are not agreed;
- note whether the member concerned or the ESO will attend and be represented at the hearing;
- list any witnesses who will give evidence;
- outline the process for the hearing.

8. The hearing

The SBE provides model hearing procedures which, though not compulsory, are expected to have a close relationship to those used locally. These will be adapted for use in Harrow.

The Committee cannot currently delegate the determination of a case to a sub-committee (note amendments to the Local Government Bill before Parliament will allow delegation). All the members of the Committee may currently take part in the hearing but the SBE recommend that only 3/5 members take part– it being fairer and more efficient that way. The SBE suggest that the Committee must be seen to fair and politically unbiased. To assist in this they recommend that an independent member chairs the hearing.

9. Representatives

The member concerned may be represented by a barrister, solicitor or anyone else, though the person must not be directly involved in the matter being determined. The Committee can remove the representative from the hearing if they disrupt it.

10. Witnesses

The member who is the subject of the report may call any witnesses they wish, though the Committee may limit the number if they consider it unreasonable. The Committee can govern its own procedures as long as it acts fairly, and so it may choose not to hear from certain witnesses if they believe they will repeat the evidence of earlier witnesses or will not provide evidence to help them reach a determination. (Quite how its possible to know this in advance isn't clear)

11. Evidence

The Committee controls the procedure and evidence presented at the hearing, including the way witnesses are questioned. The member under determination must be allowed to make

representations (verbally or in writing either direct or through a representative), to give evidence to the committee and to call witnesses to give evidence.

It may not be necessary to have any evidence other than the ESOs report in some cases, for example where the member concerned does not dispute any of the findings within it.

The committee itself can question witnesses and allow them to be questioned and cross examined by the member who is the subject of the allegation and/or the Reporting Officer as appropriate.

12. The finding of the Standards Committee and penalties available.

These are set out in paragraph 1.4 of Briefing No 1 on the section 66 Regulations. A penalty of suspension or partial suspension will normally start immediately following the Committee decision, but the Committee may chose commence the penalty any time up to six months following its decision (for example if the determination is just prior to a recess and would therefore not have an effect on the member). Note that suspension and partial suspension do not count towards the six month limit for absences from local authority meetings under which a member could be removed from office under section 85 of the Local Government Act 1972.

13. Deciding on a penalty

Any penalty imposed should be reasonable and in proportion to the member's behaviour. Before deciding on the appropriate penalty the Committee should consider the following questions and any other relevant circumstances:

- what was the member's intention? Did the member know they were failing to follow the Code of Conduct?
- Did the member get advice from officers before the incident? Was the advice acted upon in good faith?
- Has there been a breach of trust?
- Has there been any financial impropriety?
- What was the result of them failing to follow the Code of Conduct?
- How serious was the incident?
- Does the member accept that s/he was at fault?
- Did the member apologise to the relevant people?
- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same things again?

There may be local factors that the Committee want to consider when deciding on a penalty. The penalties in other similar cases decided by the Adjudication Panel or other Standards Committees may also be considered.

Suspension may be appropriate for more serious offences e.g. bullying officers, or trying to obtain an advantage or disadvantage others, or dishonesty or breaches of trust.

Inappropriate uses of council resources might result in the removal of those resources but should not unnecessarily restrict a member's ability to carry out their responsibilities as a member.

14. Notice of the Standards Committee findings

The committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the meeting and prepare a full written decision in draft at the time before memories fade. The committee administrator should also draft minutes of the meeting.

As soon as practicable after the hearing the Committee must give its full written decision to the relevant people. The SBE suggests 2 weeks as an appropriate time and suggests the following people receive it:

- The member who is the subject of the finding;
- The relevant ESO;
- The Standards Committee of any other authorities concerned;
- Any person who made the allegation.

15. Making the finding public

The Committee must arrange for a summary of the decision and reasons for it to be published in one or more newspapers (independent of the Council) circulating in the authority's area. The publication requirements are set out in Briefing No 1 on the section 66 Regulations.

The Committee report and minutes of the meeting must be available for public inspection for six years after the hearing (except any relating to parts of the hearing which were held in private)

16. Full written decision format

The Guidance recommends a report format for full written decisions.

17. Public access to hearings and documents

The SBE recommends that hearings should be held in public where possible to make sure the process is open and fair.

18. Confidential and exempt information

The Regulations state that a modified version of the rules on access to information (contained in Part VA of the Local Government Act 1972) should apply to Standards Committees when making local determinations. There is a clear presumption that meetings will be held in public.

There are two situations where hearings (or parts of hearings) can be held in private:

- Where it is necessary to prevent confidential information being revealed (i.e. that provided by a Government Department on condition that it must not be revealed, and information that cannot be revealed under legislation or court order;

- To prevent 'exempt' information being revealed to the public (i.e. those categories in the Access to Information Rules in part 4 of the Constitution plus four additional categories of exempt information. These are set out in Briefing No1)

Confidential and exempt information is treated differently. Therefore the committee must meet in private where confidential information is likely to be revealed but they have the discretion to decide whether or not to exclude the public if exempt information may be revealed.

19. Deciding whether to withhold exempt information.

The SBE advises that Committees should follow Article 6 of the European Convention on Human Rights as there may be an obligation to do so under s6 (1) of the Human Rights Act, though the legal position is not entirely clear. In any event the Committee needs to act fairly and in line with the rules of natural justice. Article 6 favours public hearings and this should be the starting point for the Committee. If the Committee decides exempt information needs to be protected then it should only exclude the public for part of the proceedings in order to protect that information. If evidence is heard in private it is important that participants understand that that evidence must not be mentioned in the public parts of the hearing.

20. Access to documents

The agenda and reports for the hearing should also be available for public inspection before and during the hearing, and for six years following the hearing. It is possible for the proper officer to prevent a report or part of it from being made public if it relates to parts of the hearing to be held in private, though the SBE recommends that this power should only be used where one of the people involved has requested that a document be kept confidential.

21. Appeals to the Adjudication Panel for England.

The member who is the subject of a finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal. The process for this is set out in Briefing No 1.

22. Costs

Members are responsible for meeting the costs of any representation at a Standards Committee or appeal tribunal.

The Office of the Deputy Prime Minister is considering allowing Councils to cover the costs of members going to and being represented at hearings and appeal tribunals.

23. The role of the Monitoring Officer

MO's need to be aware of the potential conflicts involved in advising the Standards Committee and members.

23.1 Advising the Standards Committee

The SBE recommend that the MO advises the Standards Committee unless they have an interest in the matter that would prevent them from doing so independently. If this happens the MO must arrange for an alternative appropriately qualified officer to advise the committee.

In advising the committee the MO/legal advisors role is to:

- Make sure that members understand their powers and procedures;
- Make sure the determination process is fair and that the allegation is dealt with as effectively and efficiently as possible;
- Make sure the member who the allegation has been made about understands the procedures the committee will follow;
- Provide advice to the Committee during the hearing and deliberations; and
- Help the Committee produce a written decision and a summary of it.

23.2 Advising members

In some cases it is possible that if the MO advises a member then they may not be able to advise the Committee if a hearing is subsequently required. This is unlikely to happen where the discussions between the MO and the member have been informal.

To reduce the likelihood of such conflicts MO's should:

- Arrange for another officer to advise members; OR
- Continue to advise members but reassure them that if their advice could be material to the investigation another appropriately experienced officer will be available to advise the Standards Committee.

The idea of coming to agreements with neighbouring authorities is suggested.

AV.August 2003

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