

**PART 7**

**PROTOCOLS**

**AND**

**OTHER DOCUMENTS**

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## **PROCEDURE FOR LOCAL DETERMINATIONS BY THE COUNCIL'S STANDARDS COMMITTEE**

### **1. Introduction and Summary**

- 1.1 This document sets out the procedure which will be followed under the Standards Committee (England) Regulations 2008 in the local determination of allegations of misconduct by Councillors from Forest Heath District Council and the Towns and Parishes in the district where a complaint has been investigated and a report issued. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
- 1.2 This procedure will apply to allegations of breach of the Council's Code of Conduct by elected and co-opted members of Forest Heath District Council and any Town or Parish Council in the district, and the word "Councillor" is to be taken to refer to all such persons.
- 1.3 Where the Standards Committee receives an allegation that a Councillor has breached the Council's Code of Conduct for Members, the Committee may refer the allegation for investigation. Where the Investigating Officer has issued a report the Monitoring Officer must arrange for the Standards Committee to consider it and make a finding that it accepts the investigating officer's finding of no failure or that the matter should be considered at a hearing or referred to the Adjudication Panel. Where the finding is that the matter is considered at a hearing the Standards Committee will then hold a formal hearing to determine whether a breach of the Council's Code of Conduct has occurred and whether any action should be taken in consequence.
- 1.4 The Monitoring Officer will ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the Council's Code of Conduct for Members, and upon any consequential action. The Standards Committee shall act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it.
- 1.5 Where the Standards Committee determines, after considering the investigation report, that it does appear to show that a breach of the Council's Code of Conduct has occurred, the Standards Committee will give the Councillor concerned the opportunity to make representations to it before it makes any final decision as to whether there has actually been a breach of the Council's Code of Conduct. Where the Standards Committee determines that the Councillor has acted in breach of the Council's Code of Conduct, the Committee will hear representations from the Investigating Officer and from the Councillor as to any action which the Committee should take in respect of the Councillor, and will consider whether any action should be taken by the Council to rectify any consequences of the misconduct or to prevent any further breaches.

- 1.6 The actions which the Standards Committee may take against the Councillor may include censuring the Councillor, suspending or partially suspending the Councillor from being a member of the Council for a period not exceeding six months or until he apologises for the misconduct, and the withdrawal of access to the Council's facilities.
- 1.7 Further guidance can be found in the Standards Board publication "Standards Committee Determinations", a copy of which is available from the Monitoring Officer.

## **2. The Pre-hearing Process**

- 2.1 Upon receipt of an investigation report, the Monitoring Officer shall commence the pre-hearing process.
- 2.2 The Monitoring Officer shall, within 7 days of receipt of the report commence arrangements to hold a meeting of the Standards Committee to consider the report. The Committee will make one of the following findings:
- that it accepts the finding of no failure
  - that the matter should be considered at a hearing
  - that the matter should be referred to the Adjudication Panel for determination.
- 2.3 Where the Committee accepts the finding of no failure the Monitoring Officer:
- 2.3.1 will notify as soon as reasonably practicable
- the subject member
  - the investigating officer
  - the Standards Committee of any other authority concerned
  - the person making the allegation
- 2.3.2 will publish in a local newspaper a notice stating the finding unless the subject member requests that it is not published. If a notice is published it may also be placed on the web page of any authority concerned or in any other publication (e.g. Forest Heath News).
- 2.4 Where the Committee finds that the matter should be considered at a hearing:
- The Monitoring Officer shall, within 7 days of the decision:
- (i) notify the Councillor against whom the allegation is made that a hearing is to be held and provide the Councillor with a copy of the report if he has not already received one;
  - (ii) provide a copy of the pre-hearing and hearing procedures which will be followed in respect of the allegation;
  - (iii) outline the Councillor's rights and responsibilities;
  - (iv) propose dates for the hearing;
  - (v) inform the Councillor that, if he/she seeks at the meeting of the Standards Committee to dispute any matter contained in the report without having

previously notified the Monitoring Officer of his/her intention to do so, the Standards Committee may either adjourn the meeting to enable the attendance of any witnesses to evidence that matter or refuse to allow the Councillor to dispute that matter and take their decision on the basis of the matter as set out in the report.

- 2.5 In notifying the Councillor of the reference of the allegation for a hearing, the Monitoring Officer shall ask the Councillor within the next 14 days to:
- (i) provide the Monitoring Officer with a written statement in which the Councillor sets out his/her response to the report, including whether he/she admits that the alleged breach did occur;
  - (ii) notify the Monitoring Officer in writing of the identity of any person whom the Councillor wishes to represent him/her at the meeting of the Standards Committee (noting that the Committee will normally give permission for Councillors to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined);
  - (iii) notify the Monitoring Officer in writing (using Form A in Appendix One if he/she wishes to do so) of any matter contained in the report which the Councillor proposes to dispute at the meeting of the Standards Committee, including the reasons for any disagreements;
  - (iv) notify the Monitoring Officer whether he/she wants to give evidence to the Standards Committee, either verbally or in writing (using Form B in Appendix One if he/she wishes to do so);
  - (v) notify the Monitoring Officer of any witnesses whom he/she proposes to call to give evidence before the Standards Committee;
  - (vi) notify the Monitoring Officer whether he/she wants any part of the Investigating Officer's report or relevant documents to be withheld from the public;
  - (vii) notify the Monitoring Officer whether he/she wants any part of the hearing to be held in private; and
  - (viii) notify the Monitoring Officer whether he/she can come to the hearing on the proposed date.
- 2.6 Where the Committee finds that the matter should be referred to the Adjudication Panel for decision the Monitoring Officer will take all necessary steps to refer the matter.

#### The Investigating Officer's Response

- 2.7 The Monitoring Officer shall, in consultation with the Chairman of the Standards Committee, settle which independent member will chair the meeting which hears

the report, and shall notify the other members of the Committee and the Councillor accordingly.

2.8 Upon receipt of the Councillor's response, the Monitoring Officer shall send a copy of the response to the Investigating Officer and invite the Investigating Officer within them within the next 14 days to say whether or not they:

- (i) want to be represented at the hearing;
- (ii) want to call relevant witnesses to give evidence to the Standards Committee;
- (iii) want any part of the hearing to be held in private;
- (iv) want any part of the report or other relevant documents to be withheld from the public.

#### Pre-hearing Issues

2.9 The Independent Chairman of the Standards Committee for the hearing in consultation with the legal adviser to the Committee and, where appropriate, other parties to the process shall:

- (i) confirm a time, a date and place for the hearing;
- (ii) decide the main facts of the case that are agreed;
- (iii) decide the main facts which are not agreed;
- (iv) confirm which witnesses will give evidence;
- (v) decide whether or not to hear evidence of those disagreements during the hearing;
- (vi) decide whether or not there are any parts of the hearing that should be held in private;
- (vii) decide whether or not any parts of the Investigating Officer's report or other document should be withheld from the public.

### **3. Arranging the Meeting of the Standards Committee**

3.1 The hearing must be held no earlier than 14 days after the Councillor first received the Investigating Officer's report (unless the Councillor agrees otherwise) and no later than three months after receipt of the Investigating Officer's report by the Monitoring Officer (or as soon as practicable thereafter).

3.2 At least two weeks before the day of the meeting of the Standards Committee, the Monitoring Officer write to everyone involved to:

- (i) confirm the date, time and place for the hearing;

- (ii) summarise the allegations;
- (iii) outline the main facts of the case that are agreed;
- (iv) outline the main facts that are not agreed;
- (v) confirm whether the Councillor concerned or the Investigating Officer will attend and/or be represented at the hearing;
- (vi) list those witnesses, if any, who will be asked to give evidence;
- (vii) outline the proposed procedure for the hearing.

3.3 The Monitoring Officer will send to each member of the Committee, to the Councillor, to the Deputy Monitoring Officer and to any person who made the allegation which gave rise to the investigation, the following documents:

- (i) the agenda for the meeting of the Committee or Sub-Committee;
- (ii) a copy of the Investigating Officer's report; and
- (iii) a copy of any written statement in response to the report which has been received from the Councillor

but may make the provision of any copy of the investigation report conditional upon an appropriate undertaking of confidentiality until such time as the Monitoring Officer makes the report available to the press and public or the Standards Committee agree that the press and public shall not be excluded from the meeting. Where this is done the Monitoring Officer will write to the Councillor and advise him/her that, at the commencement of the meeting, the Committee will consider whether the press and public should be excluded from the meeting.

3.4 The Monitoring Officer will, upon request, provide or arrange for any member of the Committee and the Councillor to have access to any background documents as have been identified or supplied by the Investigating Officer at any reasonable time between the issue of the agenda and the time of the meeting.

#### Confidentiality in advance of the Meeting

- 3.5
- (i) Where the Monitoring Officer considers that the Investigation report and/or Councillor's written statement in response is likely to disclose "confidential information", and in consequence that it is likely that the Committee will, during consideration of these papers, not be open to the public, he/she shall not provide copies of these papers to the press or public or permit inspection thereof by the press or public in advance of the meeting.
  - (ii) Where the Monitoring Officer considers that the Investigation report and/or the Councillor's written statement in response is likely to disclose "exempt information" see paragraph 6.3.2 of this procedure, he/she shall not provide copies of these papers to, nor permit inspection thereof by, any member of

the Council other than the members of the Committee and the Councillor in advance of the meeting.

#### **4. Procedure at the Meeting**

##### **Interpretation**

- 4.1 'Councillor' means the elected and co-opted member of the Council who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise.
- 4.2 'Investigating Officer' means the Investigating Officer ('ESO') or Deputy Monitoring Officer or other person who investigated the complaint, and includes his or her nominated representative.
- 4.3 'Legal adviser' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.

##### **Representation**

- 4.4 The Councillor may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Committee, another person.
- 4.5 The Committee can withdraw its permission to allow a representative if that representative disrupts the hearing. An appropriate warning should normally be given before permission is withdrawn.

##### **Legal Advice**

- 4.6 The Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should normally be shared with the Councillor and the Investigating Officer if they are present.

##### **Attendance of the Councillor**

- 4.7 If the Councillor is not present at the start of the meeting, the Committee shall adjourn to enable the Councillor to attend, unless they are satisfied that there is insufficient reason for the failure of the Councillor to attend, in which case the Committee may resolve to proceed in the absence of the Councillor. Where the Committee proceeds in the absence of the Councillor, the procedure for the meeting shall be adapted as necessary, giving any representative of the Councillor who is present such rights as would otherwise be accorded to the Councillor.

##### **Chairman**



- 4.8 The hearing will be chaired by an independent member of the Standards Committee.

#### Witnesses

- 4.9 Although the Councillor who is the subject of the allegation is entitled to call any witnesses he or she wants, the Standards Committee may limit the number of witnesses if it believes the number called is unreasonable.
- 4.10 The Standards Committee may choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Standards Committee to reach its decision.
- 4.11 The Standards Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the Councillor or the Investigating Officer or their representatives. Alternatively, the Standards Committee can ask that these questions be directed through the Chairman.

#### Order of Business

- 4.12 The order of business at the meeting shall be as follows:
- 4.12.1 The legal adviser to the Committee shall confirm that the Committee is quorate. For the purposes of this procedure at least three members of the Standards Committee, including at least one independent member, must be present at each meeting.
- 4.12.2 Disclosures of interests.
- 4.12.3 Consideration as to whether to adjourn or to proceed in the absence of the Councillor, if the Councillor is not present.
- 4.12.4 Introduction of the Committee, the Monitoring Officer, the legal adviser to the Committee, the Investigating Officer and the Councillor and any representative of the Councillor and the Investigating Officer.
- 4.12.5 Any representations from the Councillor and/or the Investigating Officer as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public (where the Committee decides that it will not exclude press and public, the Monitoring Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present).
- 4.12.6 The Committee shall then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

## **Making findings of fact**

- 4.12.7 After dealing with any preliminary issues, the Committee shall move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
- 4.12.8 If there is not disagreement about the facts, the Committee will move on to the next stage of the hearing.
- 4.12.9 If there is a disagreement, the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Councillor an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
- 4.12.10 The Councillor or his/her representative will then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
- 4.12.11 If the Councillor disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Committee may then:
- (i) continue with the hearing, relying on the information in the Investigating Officer's report;
  - (ii) allow the member to make representations about this issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - (iii) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
- 4.12.12 At the conclusion of the presentation by the Councillor, the Chairman shall ask the Investigating Officer to respond to any matter raised during the course of that presentation which was not raised in the Councillor's written statement in response. The Investigating Officer may request the Committee or Sub-Committee to adjourn to enable him/her to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter.
- 4.12.13 At the conclusion of the evidence, the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- 4.12.14 If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.
- 4.12.15 The Committee will then move to another room where they will consider the representations and evidence in private. At any stage in their considerations they may return to ask any further questions of the Investigating Officer or the Councillor.
- 4.12.16 On their return, the Chairman will announce the Committee's findings of fact.

#### **Did the Councillor fail to follow the Code of Conduct?**

- 4.12.17 The Committee will then consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct.
- 4.12.18 The Councillor will be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code of Conduct.
- 4.12.19 The Committee will then consider any verbal or written representations from the Investigating Officer.
- 4.12.20 The Committee may, at any time, question anyone involved on any point they raise in their representations.
- 4.12.21 The Councillor will be invited to make any final relevant points.
- 4.12.22 The Committee will then move to another room to consider the representations.
- 4.12.23 On their return, the Chairman will announce the Committee's decision as to whether or not the member has failed to follow the Code of Conduct.

#### **If the Councillor has not failed to follow the Code of Conduct**

- 4.12.24 If the Committee decides that the Councillor has not failed to follow the Code of Conduct, the Committee shall consider whether it should make any recommendations to the Council.

#### **If the Councillor has failed to follow the Code of Conduct**

- 4.12.25 If the Committee decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:

- (a) whether or not the Committee should set a penalty; and
- (b) what form any penalty should take.

4.12.26 The Committee may question the Investigating Officer and Councillor, and take legal advice, to make sure they have the information they need in order to make an informed decision.

4.12.27 The Committee will then move to another room to consider whether or not to impose a penalty on the Councillor and, if so, what the penalty should be. The available sanctions and further guidance on what sanctions to impose are set out in Appendix Two.

4.12.28 On their return, the Chairman will announce the Committee's decision.

### **Sanctions available to the Standards Committee**

- 4.12.29
- Censure;
  - Written apology submitted;
  - Training undertaken;
  - Participation in conciliation;
  - Restriction for a maximum period of 6 months of the Councillor's access to the premises of the Authority and their use of the resources of the Authority, provided that such restrictions are reasonable and proportionate and do not unduly restrict the Councillor's ability to perform their functions as a Councillor;
  - Partial suspension for a maximum period of 6 months; Partial suspension for a maximum period of 6 months or until such time as a written apology is submitted or any training or conciliation specified by the Standards Committee is undertaken;
  - Suspension for a maximum period of 6 months;
  - Suspension for a maximum period of 6 months or until such time as a written apology is submitted for any training or conciliation specified by the Standards Committee is undertaken.

4.12.30 Any sanction is to commence immediately following its imposition unless a Standards Committee directs, in the case of any sanction other than censure, that it shall commence on any date within any period of 6 months after its imposition.

### **Recommendations to the Council**

4.12.31 After considering any verbal or written representations from the Investigating Officer, the Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

### **Non-Co-operation**

- 4.13 Where the Monitoring Officer has reported that any officer or Councillor of the Council has failed to co-operate with the procedure, the Committee shall consider whether to make a formal complaint about the Councillor to the Standards Board for England or refer the conduct of the officer to the Council.

## **5. Reporting of the Decision of the Standards Committee**

- 5.1 The Committee shall announce its decision at the end of the hearing and will if requested make a short note of the decision available on the day of the hearing.

- 5.2 As soon as reasonably practicable after the Committee has made its determination a full written decision notice will be prepared and the Monitoring Officer shall send the notice of the determination to -

- (i) the Councillor who is the subject of that determination;
- (ii) the Investigating Officer concerned;
- (iii) the Standards Committee of any other Local Council of which the Councillor is, or was at the time of the alleged misconduct, a member;
- (iv) any Town or Parish Council concerned;
- (v) any person who made an allegation that gave rise to the investigation; and
- (vi) the Standards Board for England; and

subject to Section 5.5 below, arrange for a summary of the finding to be published in one or more newspapers that are independent of the Council circulating in the area of the Council(s) concerned.

- 5.3 The front cover of the Committee's full written decision shall include:

- (i) the name of the Council;
- (ii) the name of the Councillor who the allegation has been made about;
- (iii) the name of the person who made the original allegation (unless there are good reasons for keeping his or her identify confidential);
- (iv) case reference numbers of the principal council and the Standards Board for England;
- (v) the name of the Standards Committee member who chaired the hearing;
- (vi) the names of the Standards Committee members who took part in the hearing;
- (vii) the name of the Monitoring Officer and legal adviser to the Committee;
- (viii) the name of the Investigating Officer who referred the matter;

- (ix) the name of the clerk of the hearing or other administrative officer;
- (x) the date of the hearing;
- (xi) the date of the report.

5.4 The Committee's full written decision shall include:

- (i) a summary of the allegation;
- (ii) the relevant sections of the Code of Conduct;
- (iii) a summary of the evidence considered and representations made;
- (iv) the findings of fact, including the reasons for them;
- (v) the findings as to whether or not the member failed to follow the Code of Conduct, including the reasons for that finding;
- (vi) the sanction applied, if any, including the reasons for any sanction;
- (vii) the right to appeal.

5.5 **Where the Committee determines that there has not been a breach of the Code of Conduct**, the notice under paragraph 5.2 above shall -

- (i) state that the Committee found that the Councillor concerned had not failed to comply with the Code of Conduct of the Council and shall give its reasons for reaching that finding; and
- (ii) not be published in summary in one or more local newspapers in accordance with paragraph 5.2 above, if the Councillor concerned so requests.

5.6 **Where the Committee determines that there has been a failure to comply with the Code of Conduct but no action is required**, the notice under paragraph 5.2 above shall -

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

5.7 **Where the Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed**, the notice under Paragraph 5.2 shall -

- (i) state that the Committee found that the Councillor concerned had failed to comply with the Code of Conduct of the Council;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached by the Committee;
- (iv) specify the sanction imposed; and
- (v) state that the Councillor concerned may apply for permission to appeal against the determination; and

## **6. Public access for hearings and documents**

- 6.1 Hearings shall be held in public where possible to make sure that the hearing process is open and fair. The Committee has a duty to act fairly and in line with the rules of natural justice, and there is a presumption that only in exceptional circumstances will hearings be heard in private.
- 6.2 The Committee's reports and minutes shall be available for public inspection for 6 years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Confidential information and 'exempt information'

- 6.3 There are two circumstances in which a hearing (or part of a hearing) can or should be held in private:
  - 6.3.1 a hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
  - 6.3.2 The Committee has the discretion to exclude the press and public from all or part of a meeting to prevent disclosure of 'exempt information'. The regulations provide for four categories of 'exempt information' specific to Standards Committees:-
    - a. Information relating to any individuals.
    - b. Information which is subject to any obligation of confidentiality.
    - c. Information relating to national security.
    - d. The deliberations of the Standards Committee when hearing matters referred by an Investigating Officer.

- e. Information presented to a Standards Committee (or sub committee) considering:
  - a report on alternative action
  - a reference back of an investigation by the Monitoring Officer
  - a report of an Investigating Officer
  - a hearing of an allegation.

- 6.4 The Committee must hold parts of a meeting in private where confidential information is likely to be revealed.
- 6.5 The Committee must carefully consider any decision to withhold exempt information from the public and not to follow Article 6 of the European Convention on Human Rights.
- 6.6 When considering whether to exclude the public from a hearing, the Committee shall identify which parts of the reports before the Committee and minutes of the hearing are not to be made available for public inspection.
- 6.7 If evidence is heard in private, those persons present must be warned not to mention that evidence during the public parts of the hearing, or outside the hearing. Where appropriate initials must be used to protect the identity of witnesses during the hearing and in any public documentation.
- 6.8 The Committee's reports and minutes which relate to parts of the hearing held in private will not be made available for public inspection.

## **7. Confidentiality**

- 7.1 No members or officer of the Council shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out in Paragraph 7.2 below.
- 7.2 The circumstances referred to above shall be as follows:
  - (i) the disclosure is made for the purposes of enabling the Deputy Monitoring Officer to carry out his/her functions or the Standards Committee to carry out its functions in relation to the matter;
  - (ii) the disclosure is made to enable an appeals tribunal to discharge its functions (see below);
  - (iii) the person to whom the information relates has consented to the disclosure;
  - (iv) the disclosure is made in pursuance of a statutory requirement for disclosure;
  - (v) the information has previously been lawfully disclosed to the public;
  - (vi) the disclosure is made to the Audit Commission or District Auditor for the purposes of any function of the Audit Commission under the Audit Commission Act 1998; or



- (vii) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.

## **8. Appeals to the Adjudication Panel for England**

- 8.1 The Councillor who is the subject of a Committee's findings may apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding.
- 8.2 The President must receive the Councillor's written application within 21 days of the Councillor receiving notice of the Committee's decision. In this application, the Councillor must outline the reasons for the proposed appeal and whether or not he or she wants the appeal carried out in writing or in person.
- 8.3 When deciding whether or not to grant permission to appeal, the President will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or part.
- 8.4 The President will give the Councillor concerned his or her written decision within 21 days of receiving the application. The President will also give his or her written decision to:
  - (i) The Investigating Officer concerned;
  - (ii) The Standards Committee that made the original finding;
  - (iii) The Standards Committees of any other authorities concerned; and
  - (iv) Any person who made the allegation.
- 8.5 If the President refuses to give permission, he or she will explain the reasons for that decision.

### **Appeal Tribunals**

- 8.6 If permission is granted, the President of the Adjudication Panel for England will arrange for a tribunal to deal with the Councillor's appeal.
- 8.7 If the Councillor does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the Councillor at least 21 days' notice of the date of the hearing.
- 8.8 The Councillor can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the Councillor wants to have a non-legal representative, the Councillor must get permission from the tribunal beforehand, who may prevent that person acting as representative if he or she is directly involved in the case.
- 8.9 The appeal tribunal can decide its own procedures. It is likely that the Committees or Sub-Committees will be given the opportunity to make representations in relation

to the appeal and, in an appropriate case, to go to or be represented at the appeal hearing.

- 8.10 If the Councillor agrees to have the appeal carried out in writing, the tribunal may still decide to hold a hearing at which the Councillor can attend in person and be represented as outlined above. However, the tribunal may choose to carry out the appeal entirely through written representations.
- 8.11 If, after being given reasonable notice, the Councillor fails to go to or be represented at an appeal hearing, the tribunal may determine the matter in the Councillor's absence. However, if the tribunal is satisfied that this is a good reason for the Councillor's absence, it should postpone the hearing to another date.

#### Outcome of the appeal

- 8.12 The appeal tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the Standards Committee. If the tribunal upholds the Committee's finding, or part of the finding, it may:
- (i) approve the penalty set by the Committee;
  - (ii) require the Committee to set a penalty if it has not already done so; or
  - (iii) require the Committee to set a different penalty to that already set.
- 8.13 If the tribunal dismisses the finding of the Committee, the decision and any resulting penalty will no longer apply. The Committee must act on any directions given by the appeal tribunal.

#### Notice of the appeal tribunal's decision

- 8.14 The appeal tribunal will give written notice of its decision to:
- (i) the Councillor who is the subject of the decision;
  - (ii) the Investigating Officer;
  - (iii) the Standards Committee that made the original finding;
  - (iv) the Standards Committee or any other authorities concerned; and
  - (v) any person who made the allegation.
- 8.15 The appeal tribunal will also public a summary of its decision in one or more of the newspapers circulating in the area of the authority or authorities concerned.

#### **Costs**

- 8.16 Councillors are responsible for meeting the cost of any representation at a Standards Committee hearing or appeal tribunal.

*Model Forms*

- Form A - Councillor's response to the evidence set out in the Investigating Officer's report.
- Form B - Other evidence relevant to the allegation.
- Form C - Representations to be taken into account if a member is found to have failed to follow the Code of Conduct.
- Form D - Arrangement for the Standards Committee Hearing.
- Form E - Details of the Proposed witnesses to be called.
- Form F - Checklist for the pre-hearing process summary.

*Sanctions available to the Committee or Sub-Committee*

**A Sanctions available in respect of a Councillor who has ceased to be a Councillor at the date of the meeting**

Censure of the Councillor

**B Sanctions available in respect of a Councillor who remains a Councillor at the date of the meeting**

Any one, or a combination, of the following:

1. Censure of the Councillor.
2. Submission of a written apology in a form specified by the Standards Committee.
3. Restriction for a maximum period of six months of that Councillor's access to the premises of the Council and that Councillor's use of the resources of the Council, provided that any such restrictions imposed upon the Councillor -
  - (a) are reasonable and proportionate to the nature of the breach; and
  - (b) do not unduly restrict the Councillor's ability to perform his/her functions and duties as a Councillor.
4. Partial suspension of that Councillor for a maximum period of six months.
5. Partial suspension of that Councillor for a maximum period of six months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Standards Committee.
6. Suspension of that Councillor for a maximum period of six months.
7. Suspension of that Councillor for a maximum period of six months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Standards Committee or Sub-Committee.

Any sanction imposed shall commence immediately upon the determination of the Committee or Sub-Committee, unless the Committee or Sub-Committee determine that a sanction comprised within paragraphs 2 to 6 above shall commence on such date as they may determine being no later than 6 months after the date of the determination.

Deciding a Penalty

When deciding a penalty, the Standards Committee shall make sure that it is reasonable and proportionate to the Councillor's behaviour. Before deciding what

penalty to set, the Standards Committee should consider the following questions, along with any other relevant circumstances:

- What was the Councillor's intention? Did the Councillor know that he or she was failing to follow the Code of Conduct?
- Did the Councillor get advice from officers before the incident? Was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the Councillor accept he or she was at fault?
- Did the Councillor apologise to the relevant people?
- Has the Councillor previously been warned or reprimanded for similar misconduct?
- Has the Councillor failed to follow the Code of Conduct before?
- Is the Councillor likely to do the same thing again?

For example, if a Councillor has repeatedly or blatantly misused the Council's information technology resources, the Standards Committee may consider withdrawing those resources from the Councillor.

Suspension may be appropriate for more serious cases, such as those involving:

- Bullying officers;
- Trying to gain an advantage or disadvantage for themselves or others; or
- Dishonesty or breaches of trust.

Penalties involving restricting access to the Council's premises or equipment should not necessarily restrict a Councillor's ability to carry out his or her responsibilities as an elected representative or co-opted member.

There may be other factors, specific to the local environment, that the Standards Committee may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Standards Committee may want to consider decisions made by other Standards Committees and case tribunals drawn from the Adjudication Panel for England that deal with similar types of cases.

## FOREST HEATH DISTRICT COUNCIL

### FORM A - Member's response to the evidence as set out in the

### ESO's/Council Officer's report

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

Paragraph Number from the report	Reason for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

## FOREST HEATH DISTRICT COUNCIL

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

### FORM B - Other evidence relevant to the allegation

Paragraph Number	Details of the evidence
1	
2	
3	
4	
5	

## FOREST HEATH DISTRICT COUNCIL

### 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 Code of Conduct.

**Please note that no such finding has been made yet.**

### REPRESENTATIONS TO BE TAKEN INTO ACCOUNT IF A MEMBER IS FOUND TO have failed to follow the code of conduct

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	



## FOREST HEATH DISTRICT COUNCIL

### FORM D - Arrangements for the Standards Committee hearing

Please tick the relevant boxes

The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing?  If 'NO', please explain why	Yes <input type="checkbox"/> No <input type="checkbox"/>	Reason:
2. Are you going to present your own case?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
3. If you are not presenting your own case, will a representative present it for you?  If 'Yes', please state the name of your representative.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Name:
4. Is your representative a practising solicitor or barrister?  If 'Yes', please give his or her legal qualifications. Then go to question 7. If 'No' please go to question 5.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Qualifications:
1. Does your representative	Yes <input type="checkbox"/>	Details:

6. Are you going to give evidence to the Committee?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If 'Yes' will it be in writing or verbally? Writing <input type="checkbox"/> Verbally <input type="checkbox"/>
7. Are you going to call any witnesses?  If 'Yes', please fill in Form E.	Yes <input type="checkbox"/> No <input type="checkbox"/>	
8. Do you, your representative or your witnesses have any access difficulties or special needs?  If 'Yes', please give details.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Details:
9. Do you want any part of the hearing to be held in private?  If 'Yes', please give reasons.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Reasons:
10. Do you want any part of	Yes <input type="checkbox"/>	Reasons:



<p>Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>No</p>	
<p>evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p> <p>b. Will the witness give evidence about what action the Standards Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <p>No</p>	<p>Outline of evidence:</p>

## **FOREST HEATH DISTRICT COUNCIL**

### **FORM F - CHECKLIST FOR THE PRE-HEARING PROCESS SUMMARY**

After the Standards Committee has received responses from the Member who the allegation has been made about and the ESO, it should prepare a summary of the main aspects of the case that will be heard.

The pre-Hearing process summary should include:

- the name of the Council;
- the name of the Member who the allegation has been made about;
- the name of the person who made the original allegation (unless there are good reasons to keep his or her identity confidential);
- case reference numbers of the Council and The Standards Board for England;
- the name of the Standards Committee Member who will chair the Hearing;
- the name of the Monitoring Officer;
- the name of the ESO who referred the matter;
- the name of the clerk of the Hearing or other Administrative Officer;
- the date the pre-Hearing process summary was produced;
- the date, time and place of the Hearing;
- a summary of the allegation;
- the relevant section or sections of the Code of Conduct;
- the findings of fact in the ESO's report that are agreed;
- the findings of fact in the ESO's report that are not agreed;
- whether or not the Member or the ESO will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- and outline of the proposed procedure for the Hearing.

## **APPENDIX TWO**

### ***Sanctions available to the Committee or Sub-Committee***

#### **A Sanctions available in respect of a Councillor who has ceased to be a Councillor at the date of the meeting**

Censure of the Councillor

#### **B Sanctions available in respect of a Councillor who remains a Councillor at the date of the meeting**

Any one, or a combination, of the following:

8. Censure of the Councillor.
9. Restriction for a maximum period of three months of that Councillor's access to the premises of the Council and that Councillor's use of the resources of the Council, provided that any such restrictions imposed upon the Councillor -
  - (c) are reasonable and proportionate to the nature of the breach; and
  - (d) do not unduly restrict the Councillor's ability to perform his/her functions and duties as a Councillor.
10. Partial suspension of that Councillor for a maximum period of three months.
11. Partial suspension of that Councillor for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Standards Committee.
12. Suspension of that Councillor for a maximum period of three months.
13. Suspension of that Councillor for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Standards Committee or Sub-Committee.

Any sanction imposed shall commence immediately upon the determination of the Committee or Sub-Committee, unless the Committee or Sub-Committee determine that a sanction comprised within paragraphs 2 to 6 above shall commence on such date as they may determine being no later than 6 months after the date of the determination.

#### **Deciding a Penalty**

When deciding a penalty, the Standards Committee shall make sure that it is reasonable and in proportion to the Councillor's behaviour. Before deciding what penalty to set, the Standards Committee must consider the following questions, along with any other relevant circumstances:

- What was the Councillor's intention? Did the Councillor know that he or she was failing to follow the Code of Conduct?
- Did the Councillor get advice from officers before the incident? Was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the Councillor accept he or she was at fault?
- Did the Councillor apologise to the relevant people?
- Has the Councillor previously been warned or reprimanded for similar misconduct?
- Has the Councillor failed to follow the Code of Conduct before?
- Is the Councillor likely to do the same thing again?

For example, if a Councillor has repeatedly or blatantly misused the Council's information technology resources, the Standards Committee may consider withdrawing those resources from the Councillor.

Suspension may be appropriate for more serious cases, such as those involving:

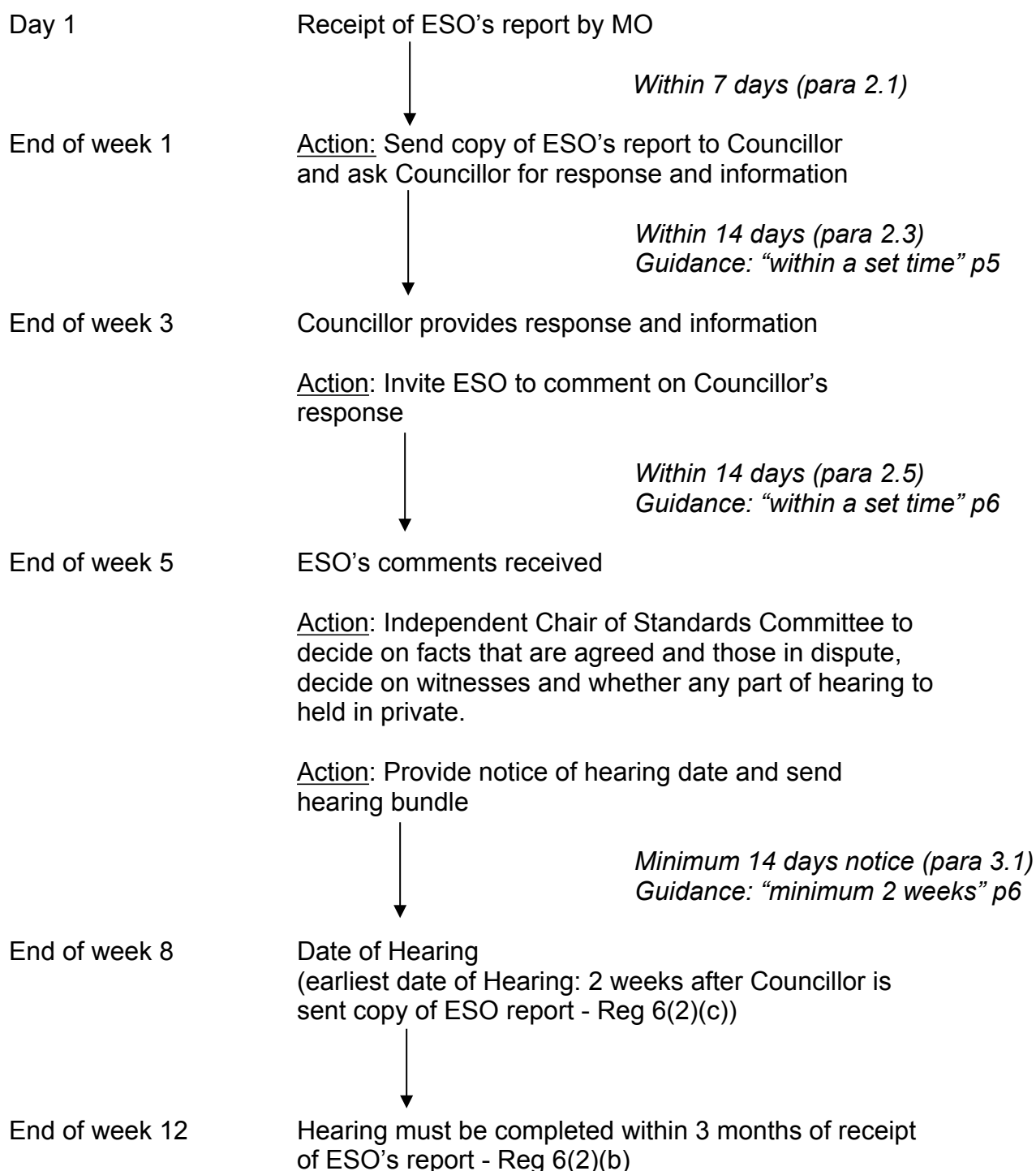
- Bullying officers;
- Trying to gain an advantage or disadvantage for themselves or others; or
- Dishonesty or breaches of trust.

Penalties involving restricting access to the Council's premises or equipment should not necessarily restrict a Councillor's ability to carry out his or her responsibilities as an elected representative or co-opted member.

There may be other factors, specific to the local environment, that the Standards Committee may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Standards Committee may want to consider decisions made by other Standards Committees and case tribunals drawn from the Adjudication Panel for England that deal with similar types of cases.

### Time line for local adjudication procedure



## **PROCEDURE FOR LOCAL INVESTIGATION OF REFERRED COMPLAINTS AND LOCAL STANDARDS HEARINGS**

### **1. Introduction and Summary**

- 1.1 This document sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors. No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.
- 1.2 This procedure applies to breaches of the Council's Code of Conduct for Members by elected and co-opted Members of the Council, and the word "Councillor" is to be taken to refer to all such persons.
- 1.3 In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Committee, to enable the Standards Committee to come to an informed decision as to whether the Councillor has failed to comply with the Council's Code of Conduct for Members and upon any consequential action. The Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision.

### **1.4 Interpretation**

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

### **2. Notification of Reference of Allegation to the Monitoring Officer**

#### **Appointment of Investigating Officer**

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



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

Notification to the Councillor

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

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or the complainant has been granted anonymity);
- (iii) of the conduct which is the subject of the allegation;
- (iv) of the section(s) of the Code of Conduct which appear to him to be relevant to the allegation;
- (v) of the procedure which will be followed in respect of the allegation, and
- (vi) of the identity of the Investigating Officer.

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

Notification to the Parish or Town Council Clerk

- 2.5 Where the allegation relates to the conduct of a member of a Parish or Town Council in his/her capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish or Town Council concerned in writing of the matters set out in paragraphs 2.3 (i) - (iv) and (vi) above.

Notification to the Person who made the Allegation

- 2.6 At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2.3 (i) - (iv) and (vi) above.

3. **Conduct of Investigation**

Purpose of the Investigation

- 3.1 The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Standards Committee a report which will provide the

Standards Committee with sufficient information to determine whether the Councillor has acted in breach of the Code of Conduct and where there has been a breach of the Code of Conduct whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

#### Termination of the Investigation

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

#### Additional Matters

- 3.3 Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall, where the additional matter relates to an apparent breach of the Code of Conduct by a Councillor report the matter to the Monitoring Officer who will then determine whether to report the additional matter to the Standards Committee.
- 3.4 The Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation.

#### Production of documents, information and explanations

- 3.5 In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.
- 3.6 In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any authority of which the Councillor is a member to provide any document which is in his/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

#### Interviews

##### Requesting attendance

- 3.7 In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any information, document or explanation for the purposes of Paragraph 3.5, as he/she thinks necessary for the purposes of carrying out the investigation.

## Representation

- 3.8 Any person who appears before the Investigating Officer may arrange to be accompanied at their own expense by a Solicitor, Counsel or friend.

## Note of interviews

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

## Costs

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

## Reference back to the Standards Board

- 3.11 At any point in the course of the investigation referred by an Ethical Standards Officer, if the Investigating Officer is of the opinion
- (i) that the seriousness of the matters which he/she is investigating, including any additional matters identified under paragraph 3.3 above, is such that they may merit the application of a sanction beyond the powers of the Standards Committee, or
  - (ii) that the nature of the allegations is such that it would be inappropriate for the Standards Committee to determine the matter, or
  - (iii) that he has been prevented from completing the investigation

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

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

3.13 At any point in the course of an investigation, if the Investigating Officer considers that the following apply:

- (a) the evidence suggests that the case is more or less serious than apparent to the Assessment or Review Sub Committee so that they may have considered another course of action, or
- (b) the Councillor has died, is seriously ill or has resigned from the Authority such that it is no longer appropriate to continue the investigation

then he/she may, after consulting the Monitoring Officer refer the matter back to the Standards Committee.

#### 4. **The Draft Report**

4.1 When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in paragraph 3.1, or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report setting out:

- (i) the details of the allegation;
- (ii) the relevant provisions of statute and of the Code of Conduct;
- (iii) the Councillor's initial response to notification of the allegation (if any);
- (iv) the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
- (v) a list of any documents relevant to the matter;
- (vi) a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
- (vii) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
- (viii) a statement of his/her draft findings of fact
- (ix) his/her conclusion as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members of any Council, and
- (x) any recommendations which the Investigating Officer is minded to make to any Council concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct for rectifying any deficiency in the Council's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. Where the allegation relates to a Parish or Town Councillor, such recommendations are recommendations which the Investigating Officer

recommends that the Standards Committee makes to the Parish or Town Council concerned.

4.2 The draft report should also state

- (i) that the report is confidential;
- (ii) that the report does not necessarily represent the Investigating Officer's final finding, and
- (iii) that the Investigating Officer will present a final report to the Standards Committee once he/she has considered any comments received on the draft report.

4.3 The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.

4.4 The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

5. **The Final Report**

5.1 After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should state that the report represents the Investigating Officer's final findings and will be presented to the Standards Committee, and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters and notes of interviews with witnesses.

5.2 The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that;

- (i) the final report will be referred to the Standards Committee for their consideration, and
- (ii) where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members, he/she will refer the report to the Standards Committee for a formal hearing.

## **STANDARDS COMMITTEE**

### **ASSESSMENT AND REVIEW PROCEDURES**

Procedures to be followed on Allegations that a District or Parish Councillor has breached the Members' Code of Conduct: compiled in relation to s.57A(1) of the Local Government and Public Involvement in Health Act, 2007, Regulation 10(3) of SI 2008 No.1085 and SBE Guidance.

- *Subject Member*: - the member the subject of an allegation.
- *Independent Member*: - a person who is not a member of officer of Forest Heath District Council or any other relevant authority who is appointed to Forest Heath District Council's Standards Committee.
- *Assessment Sub-Committee*: - a sub-committee which is responsible for the initial assessment of complaints that a member may have breached the Code.
- *Review Sub-Committee*: - a sub-committee which is responsible for reviewing the assessment sub-committee's decision where it decided to take no further action on a complaint.
- *Standards Committee*: - the committee responsible for undertaking hearings into alleged breaches of the Code following an investigation.

### **The Initial Complaint**

Forest Heath District Council's Standards Committee deals with complaints against Forest Heath District Council elected or co-opted members and complaints against Town or Parish Councillors of any Town or Parish Council in the Forest Heath District.

Any person may make a complaint in writing that a Forest Heath District Councillor or a Town/Parish Councillor has breached the Code of Conduct for the councillor's authority. A complaint can be made via the statutory Complaints Procedures set up under the Local Government Act 2000 and related legislation.

Under the formal statutory procedures, complaints must be submitted in writing. This includes fax and electronic submissions. However, the requirement for complaints to be submitted in writing must be read in conjunction with the Disability Discrimination Act 2000 and the requirement to make reasonable adjustments. An example of this would be in assisting a complainant who has a disability that prevents them from making their complaint in writing. In such cases, Forest Heath District officers may need to transcribe a verbal complaint and then produce a written copy for approval by the complainant or the complainant's representative.

The Council will also make available support to complainants where English is not the complainant's first language.

Complaints should normally use the Council's Code of Conduct Complaint Form, available from the Monitoring Officer (see Contact Details below) or via the Council's website: [www.forest-heath.gov.uk](http://www.forest-heath.gov.uk). Otherwise, complaints may be made including the following information:

- the complainant's name, address and other contact details
- complainant status, for example, member of the public, fellow member or officer
- who the complaint is about and the authority or authorities that the member belongs to

- details of the alleged misconduct including, where possible, dates, witness details and other supporting information
- equality monitoring data if applicable, for example nationality of the complainant.

Complainants are warned that the complainant's identity will normally be disclosed to the subject member. Note: in exceptional circumstances, if it meets relevant criteria and at the discretion of the standards committee, this information may be withheld. See further on this below. The receipt of a written complaint will be acknowledged.

### **Assessment of a Complaint**

The complaint will be reported to the Assessment Sub-Committee. Before assessment of a complaint begins, the assessment sub-committee must be satisfied that the complaint meets the following tests:

- it is a complaint against one or more named members of the authority or an authority covered by the standards committee
- the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.

The criteria which the Sub-Committee will use in assessing a complaint are set out in the attached form "Criteria for accepting Complaints".

### **Initial Assessment Decisions:**

The assessment sub-committee will aim to complete its initial assessment of an allegation within an average of 20 working days, to reach a decision on what should happen with the complaint.

The assessment sub-committee is required to reach one of the three following decisions on a complaint about a member's actions in relation to the Code of Conduct:

- referral of the complaint to the monitoring officer of the authority concerned, (which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority) for investigation or alternative action
- referral of the complaint to the Standards Board for England for investigation
- no action should be taken in respect of the complaint

The monitoring officer will write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

### **Referral for local investigation**

When the assessment sub-committee considers a new complaint, it can decide that it should be referred to the monitoring officer for investigation. The monitoring officer will

write to the relevant parties informing them of the decision and, if appropriate, advising who will be responsible for conducting the investigation.

### **Referral to the Standards Board for England**

In most cases, authorities will be able to deal with the investigation of complaints concerning members of their authorities and, where relevant, the parish and town councils they are responsible for. However, there will sometimes be issues in a case, or public interest considerations, which make it difficult for the authority to deal with the case fairly and speedily. In such cases, the assessment sub-committee may wish to refer a complaint to the Standards Board to be investigated by an ethical standards officer.

### **Referral for other action**

When the assessment sub-committee considers a new complaint, it can decide that other action to an investigation should be taken and it can refer the matter to the monitoring officer to carry this out. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The assessment sub-committee must consult its monitoring officer before reaching a decision to take other action. The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct will lend themselves to being resolved in this way. They can also indicate a wider problem at the authority concerned. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. Other action can be the simplest and most cost effective way of getting the matter resolved, helping the authority to work more effectively, and of avoiding similar complaints in the future.

Everyone involved in the process will need to understand that the purpose of other action is not to find out whether the member breached the Code – the decision is made as an alternative to investigation. Complaints that have been referred to the monitoring officer for other action will not then be referred back to the standards committee if the other action is perceived to have failed. There will be a requirement that the parties involved confirm in writing that they will co-operate with the process of other action proposed.

The following are some examples of alternatives to investigation:

- arranging for the subject member to attend a training course
- arranging for that member and the complainant to engage in a process of conciliation
- instituting changes to the procedures of the authority if they have given rise to the complaint.

### **Decision to take no action**

The assessment sub-committee can decide that no action is required in respect of a complaint. For example, this could be because the assessment sub-committee does not consider the complaint to be sufficiently serious to warrant any action. Alternatively, it could be due to the length of time that has elapsed since the alleged conduct took place and the complaint was made.

### **Notification requirements – local assessment decisions**



If the assessment sub-committee decides to take no action over a complaint, then as soon as possible after making the decision it will give notice in writing of the decision and set out the reasons for that decision. Where no potential breach of the Code is disclosed, the assessment sub-committee will explain in the decision notice what the allegation was and why they believe this to be the case. This notice will be given to the relevant parties. The relevant parties will be the complainant and the subject member. The standards committee will aim to send out its decision notice within five working days of the decision being made. If the assessment sub-committee decides that the complaint should be referred to the monitoring officer or to the Standards Board for England, it will send a summary of the complaint to the relevant parties. It will state what the allegation was and what type of referral it made, for example whether it referred the complaint to the monitoring officer or to the Standards Board for investigation. After it has made its decision, the assessment sub-committee does not have to give the subject member a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation. The assessment sub-committee can use its discretion to give limited information to the subject member if it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary will be kept under review as circumstances change.

### **Reviews of ‘no further action’ decisions**

If the assessment sub-committee decides not to take any action on a complaint, then the complainant has a right to request a review over that decision. The review sub-committee will aim to undertake the review within the same timescale as the initial assessment – that is, to complete the review within an average of 20 working days. The review must be, and must be seen to be, independent of the original decision. Members of the assessment sub-committee who made the original decision must not take part in the review of that decision. A separate review sub-committee, made up of members of the standards committee, will consider the review. The review sub-committee will apply the same criteria used for initial assessment. The review sub-committee has the same decisions available to it as the assessment sub-committee.

There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the review sub-committee will consider carefully if it is more appropriate to pass this to the assessment sub-committee to be handled as a new complaint. In this instance, the review subcommittee will still need to make a formal decision that the review request will not be granted. For example, a review may be more appropriate if a complainant wishes to challenge that:

- not enough emphasis has been given to a particular aspect of the complaint
- there has been a failure to follow any published criteria
- there has been an error in procedures.

However, if more information or new information of any significance is available, and this information is not merely a repeat complaint, then a new complaint rather than a request for review may be more suitable. Notification requirements – reviews of local assessment decisions If the standards committee receives a review request from the complainant, it will notify the subject member and other relevant parties that it has received the request. When the review sub-committee reviews the assessment sub-committee’s decision it has the same decisions available to it that the assessment sub-committee had. It could be

decided that no action should be taken on the complaint. In this case, the review sub-committee must, as soon as possible after making the decision, give the complainant and the subject member notice in writing of both the decision and the reasons for the decision. If it is decided that the complaint should be referred to the monitoring officer or to the Standards Board for England, the standards committee should write to the relevant parties telling them this and letting them have a summary of the complaint.

The review sub-committee will aim to send out its decision notice within five working days of the decision being made.

In accordance with regulations, Forest Heath District Council may agree to delegate to the Standards committee of St Edmundsbury borough Council the function of carrying out the review of a decision of an assessment sub committee that no action should be taken in respect of a complaint. Where it is considered that this delegation should be used because of capacity issues arising from either absence, vacancies, or conflicts of interest the Monitoring Officer will consult the Chairman of the committee before deciding to do so.

## **OTHER ISSUES**

### **Access to meetings and decision making**

Initial assessment decisions, and any subsequent review of decisions to take no further action on a complaint, must be conducted in closed meetings. These are not subject to the notice and publicity requirements under Part 5 of the Local Government Act 1972. Such meetings may have to consider unfounded and potentially damaging complaints about members, which it would not be appropriate to make public. As such, a standards committee undertaking its role in the assessment or review of a complaint is not subject to the following rules:

- rules regarding notices of meetings
- rules on the circulation of agendas and documents
- rules over public access to meetings
- rules on the validity of proceedings

Instead, Regulation 8 of the regulations sets out what must be done after the assessment or review sub-committee has considered a complaint. The new rules require a written summary to be produced which will include:

- the main points considered
- the conclusions on the complaint
- the reasons for the conclusion

The summary may give the name of the subject member unless doing so is not in the public interest or would prejudice any subsequent investigation. The written summary must be made available for the public to inspect at the authority's offices for six years and given to any parish or town council concerned. The summary does not have to be available for inspection or sent to the parish or town council until the subject member has been sent the summary. In limited situations, a standards committee can decide not to give the written summary to the subject member when a referral decision has been made and, if this is the case, authorities should put in place arrangements which deal with when public inspection and parish or town council notifications will occur. This will usually be when the written summary is eventually given to the subject member during the

investigation process. In addition, authorities must have regard to their requirements under Freedom of Information and Data Protection legislation.

### **Withdrawing complaints**

There may be occasions when the complainant asks to withdraw their complaint prior to the assessment sub-committee having made a decision on it. In these circumstances, the assessment sub-committee will need to decide whether to grant the request. The following considerations will be applied:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

### **Multiple and vexatious complaints**

The Council may receive a number of complaints from different complainants about the same matter. A number of complaints about the same matter may be considered by the assessment sub-committee at the same meeting. If so, an officer should be asked to present one report and recommendation that draws together all the relevant information and highlights any substantively different or contradictory information. However, the assessment sub-committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.

Unfortunately, a small number of people abuse the complaints process. The Council reserves the right to take appropriate action in these cases: for example, limiting an individual's contact with the authority.

However, standards committees must consider every new complaint that they receive in relation to the Code of Conduct. If the standards committee has already dealt with the same complaint by the same person and the monitoring officer does not believe that there is any new evidence, then a complaint will not be considered. A person may make frequent allegations about members, most of which may not have any substance. Despite this, new allegations will be considered if they contain a complaint that requires some action to be taken. Vexatious or persistent complaints or complainants can usually be identified through the following patterns of behaviour, which may become apparent in the complaints process:

- repeated complaints making the same, or broadly similar, complaints against the same member or members about the same alleged incident
- use of aggressive or repetitive language of an obsessive nature
- repeated complaints that disclose no potential breach of the Code where it seems clear that there is an ulterior motive for a complaint or complaints
- where a complainant refuses to let the matter rest once the complaints process (including the review stage) has been exhausted

Malicious or tit-for-tat complaints are unlikely to be investigated unless they also raise serious matters.

## **Case history**

Documents that relate to complaints that the assessment sub-committee decided not to investigate will be kept for a minimum of 12 months after the outcome of any review that has been concluded. This is in case of legal challenges, and also in order to meet the Standards Board for England's monitoring requirements. Documents that relate to complaints the subject of any hearing or further action will be retained in accordance with the authority's file retention policy and in accordance with the principles of data protection. Old cases may be relevant to future complaints if they show a pattern of behaviour. The Council will identify complaints about the same matter that have already been considered by the standards committee.

## **Confidentiality**

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the assessment sub-committee. The assessment sub-committee will consider the request for confidentiality alongside the substance of the complaint itself.

The criteria by which the assessment sub-committee will consider requests for confidentiality are set out in the attached form "Criteria for considering requests for confidentiality":

In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint. In such cases the complainant may also be given the option of requesting a withdrawal of their complaint.

When considering requests for confidentiality, the assessment sub-committee will also consider whether it is possible to investigate the complaint without making the complainant's identity known. If the assessment sub-committee decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. In certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the subject member. The assessment sub-committee will decide where the balance lies in the particular circumstances of each complaint.

## **Anonymous complaints**

Anonymous complaints will be dealt with on their merits, but will not normally be proceeded with unless the complaint includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

## **Members with conflicts of interest**

A member of the standards committee who was involved in any of the following decisions can be a member of the committee that hears and determines the complaint at the conclusion of an investigation:

- the initial assessment decision
- a referral back for another assessment decision
- a review of an assessment decision

## **Limits of Assessment**

The assessment decision relates only to whether the complaint discloses something that needs to be investigated or referred for other action. It does not determine whether the conduct took place or whether it was a breach of the Code. The standards committee hearing the case will decide on the evidence before it as to whether the Code has been breached and, if so, if any sanction should apply. The assessment process will be conducted with impartiality and fairness.

## **Complaints about members of more than one authority**

The introduction of the local assessment of complaints may raise an issue relating to what should happen if a complaint is made against an individual who is a member of more than one authority – often known as a dual-hatted member. In such cases, the member may have failed to comply with more than one authority's Code of Conduct.

Where a complaint is received about a dual-hatted member, the monitoring officer of the authority will check if a similar allegation has been made to the other authority, or authorities, on which the member serves. Decisions on which standards committee should deal with a particular complaint will then be taken by the standards committees themselves, following discussion with each other. They may take advice as necessary from the Standards Board for England.

## **PROCEDURE FOR LOCAL STANDARDS HEARING**

### **1. Interpretation**

- 1.1 'Councillor' means the member of the Council who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's nominated representative.
- 1.2 'Investigating Officer' means the Ethical Standards Officer (ESO) who referred the report to the Council and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer and his or her nominated representative).
- 1.3 'The matter' is the subject matter of the Investigating Officer's report.
- 1.4 'The Standards Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- 1.5 'The Committee Support Officer' means an officer of the Council responsible for supporting the Standards Committee's discharge of its functions and recording the decisions of the Standards Committee.
- 1.6 'Legal Adviser' means the Officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified Officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.7 'The Chairman' refers to the person presiding at the hearing.

### **2. Modification of Procedure**

- 2.1 The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

### **3. Representation**

- 3.1 The Councillor may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Committee, another person. Note that the cost of such representation must be met by the Member.

### **4. Pre-hearing Procedure (ESO's Report)**

- 4.1 Upon reference of a matter from an Ethical Standards Officer for local determination following completion of the Ethical Standards Officer's report, the Monitoring Officer shall:
  - (a) Arrange a date for the Standards Committee's hearing;

- (b) Send a copy of the report to the Councillor and advise him of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him of the date, time and place for the hearing;
- (d) Notify the Parish or Town Council of the matter and of the date, time and place of the hearing;
- (e) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will require the attendance of the Ethical Standards Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing and if so to arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Standards Committee will need to address and
- (h) Arrange that the agenda for the Hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - (i) All Members of the Standards Committee who will conduct the hearing;
  - (ii) The Councillor;
  - (iii) The person who made the allegation and
  - (iv) The Investigating Officer.

## 5. **Pre-Hearing Process (Local Investigation)**

- 5.1 Upon receipt of the final report of the Investigating Officer including a finding that the Councillor failed to comply with the Code of Conduct for Members or the Standards Committee finds that the matter should be considered at a formal hearing, the Monitoring Officer shall:
- (a) Arrange a date for the Standards Committee's hearing;
  - (b) Send a copy of the report to the Councillor and advise him of the date, time and place for the hearing;
  - (c) Send a copy of the report to the person who made the allegation and advise him of the date, time and place for the hearing;

- (d) Notify the Parish or Town Council of the matter and of the date, time and place of the hearing;
- (e) Request the Councillor to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by the Standards Board for England within 14 days of receipt;
- (f) In the light of any Pre-Hearing Forms returned by the Councillor, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing and if so to arrange for their attendance;
- (g) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Standards Committee will need to address and
- (h) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
  - (i) All Members of the Standards Committee who will conduct the hearing;
  - (ii) The Councillor;
  - (iii) The person who made the allegation and
  - (iv) The Investigating Officer.

## 6. **Legal Advice**

- 6.1 The Standards Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Standards Committee should be shared with the Member and the Investigating Officer if they are present.

## 7. **Setting the Scene**

- 7.1 At the start of the hearing, the Chairman shall introduce each of the Members of the Standards Committee, the Member (if present), the Investigating Officer (if present) and any other Officers present and shall then explain the procedure which the Standards Committee will follow in the conduct of the hearing.

## 8. **Preliminary procedural issues**

- 8.1 The Standards Committee shall then deal with the following preliminary procedural matters in the following order:-



### **Disclosure of interest**

- 8.2 The Chairman shall ask Members of the Standards Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter and to withdraw from consideration of the matter if so required.

### **Quorum**

- 8.3 The Chairman shall confirm that the Standards Committee is quorate. For these purposes a meeting of the Standards Committee is not quorate unless at least three Members of the Standards Committee are present for the duration of the meeting. The three Members must include at least one Independent Member, unless an Independent Member would have been present but was precluded from participating in any of the business of the Standards Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Standards Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its Members. However, it is only a requirement that the Parish representative is actually present when the Standards Committee is dealing with a Parish matter. Parish Sub-Committees, convened to deal with a Parish matter, must have a Parish representative as a Member of the Sub-Committee, but there is no requirement for him/her actually to attend the meeting for it to be quorate.

### **Hearing Procedure**

- 8.4 The Chairman shall confirm that all present know the procedure which the Standards Committee will follow in determining the matter.

### **Proceeding in the absence of the Member**

- 8.5 If the Councillor is not present at the start of the hearing:
- (i) the Chairman shall ask the Monitoring Officer whether the Councillor has indicated his/her intention not to attend the hearing;
  - (ii) the Standards Committee shall then consider any reasons which the Councillor has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
  - (iii) if the Standards Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
  - (iv) if the Standards Committee is not satisfied with such reasons, or if the Councillor has not given any such reasons, the Standards Committee shall decide whether to consider the matter and make a determination in the absence of the Councillor or to adjourn the hearing to another date.

### **Exclusion of Press and Public**

- 8.6 The Standards Committee may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

- 8.7 The Chairman shall ask the Councillor, the Investigating Officer and the legal adviser to the Standards Committee whether they wish to ask the Standards Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Standards Committee shall then determine whether to exclude the press and public from all or any part of the hearing.
- 8.8 Where the Standards Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

9. **A failure to comply with the Code of Conduct**

- 9.1 The Standards Committee will then address the issue of whether the Councillor failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report. It should be noted that the Standards Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigating Officer's report. It is possible that, in the course of their consideration, the Standards Committee apprehend that the Councillor may have failed to comply with the Code of Conduct in some other manner (for example that the Councillor's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the Councillor's Office or Authority into disrespect). It may be that such a possible additional or alternative failure will not be within the remit of the Standards Committee as, at that stage, the Councillor will not have had notice of the Standards Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Standards Committee do apprehend a possible additional or alternative failure, a failure by a different Councillor, or a failure in respect of the code of conduct of another Authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Board for England.
- 9.2 The Chairman shall ask the Councillor to confirm that he/she maintains the position as set out in the pre-hearing summary.

**The Pre-Hearing Process Summary**

- 9.3 The Chairman will ask the legal adviser or the Committee Support Officer to present his/her report, highlighting any points of difference in respect of which the Councillor has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chairman will then ask the Councillor to confirm that this is an accurate summary of the issues and ask the Councillor to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report.
- 9.4 If the Councillor admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Standards Committee may then make a determination that the Councillor has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken.

- 9.5 If the Councillor identifies additional points of difference, the Chairman shall ask the Councillor to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Standards Committee is not satisfied with the Councillor's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Councillor to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Councillor did not identify a point of difference as part of the pre-hearing process. Alternatively it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

### **Presenting the Investigating Officer's report**

- 9.6 If the Investigating Officer is present, the Chairman will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Councillor and why he/she concluded, on the basis of his/her findings of fact, that the Councillor has failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- 9.7 If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Standards Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw their attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- 9.8 No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or evidence of each witness, the Chairman shall ask the Councillor if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

### **THE COUNCILLOR'S RESPONSE**

- 9.9 The Chairman shall then invite the Councillor to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- 9.10 No cross-examination shall be permitted but, at the conclusion of the Councillor's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigating Officer if there are any matters upon which the Standards Committee should seek the advice of the Councillor or the witness.

## **Witnesses**

- 9.11 The Standards Committee shall be entitled to refuse to hear evidence from the Investigating Officer, the Councillor or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the Code of Conduct.
- 9.12 Any member of the Standards Committee may address questions to the Investigating Officer, to the Councillor or to any witness.

## **ADDITIONAL EVIDENCE**

- 9.13 At the conclusion of the evidence, the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.
- 9.14 If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.

## **Determination as to whether there was a failure to comply with the Code of Conduct**

- 9.15 At the conclusion of the Councillor's response, the Chairman shall ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.
- 9.16 Unless the determination merely confirms the Councillor's admission of a failure to comply with the Code of Conduct (as set out above), the Standards Committee shall then retire to another room to consider in private whether the Councillor did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
- 9.17 The Standards Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- 9.18 The Standards Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Councillor or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any information, it may adjourn and instruct an officer or request the Councillor to produce such further evidence to the Standards Committee.
- 9.19 At the conclusion of the Standards Committee's consideration, the Standards Committee shall consider whether it is minded to make any recommendations to the Council with a view to promoting high standards of conduct among Councillors.

- 9.20 The Standards Committee shall then return to the main hearing room and the Chairman will state the Standards Committee's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

**10. If the Councillor has not failed to follow the Code of Conduct**

- 10.1 If the Standards Committee determines that the Councillor has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report the following action then ensues:

- (a) If the Standards Committee apprehends, from the evidence which they have received during the hearing, that a Councillor has failed to comply with the Code of Conduct (other than the matter which the Standards Committee has just determined), the Chairman shall outline the Standards Committee's concerns and state that the Standards Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board of England.
- (b) The Chairman should then set out any recommendations which the Standards Committee is minded to make to the Council with a view to promoting high standards of conduct among Councillors and seek the views of the Councillor, the Investigating Officer and the legal adviser before the Standards Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Councillor whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

**11. Action consequent upon a failure to comply with the Code of Conduct**

- 11.1 The Chairman shall ask the Investigating Officer (if present, or otherwise the legal adviser) whether, in his/her opinion, the Councillor's failure to comply with the Code of Conduct is such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction. The sanctions which are available to the Standards Committee under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Regulation 7, as amended by the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 are any of the following:

- (i) censure of that Member;
- (ii) restriction for a maximum period of three months of that Member's access to the premises of the Council and that Member's use of the resources of the Council, provided that such restrictions imposed upon the Member -
  - (aa) are reasonable and proportionate to the nature of the breach; and
  - (bb) do not unreasonably restrict the Member's ability to perform his functions and duties as a Member
- (iii) partial suspension of that Member for a period up to a maximum of three months;
- (iv) suspension of that Member for a period up to a maximum of three months;

- (v) a requirement that that Member submit a written apology in a form specified by the Standards Committee;
- (vi) a requirement that that Member undergo training as specified by the Standards Committee;
- (vii) a requirement that that Member undergo conciliation as specified by the Standards Committee;
- (viii) partial suspension of that Member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee
- (ix) partial suspension of that Member for a period up to a maximum of three months or until such time as he undergoes such training or conciliation as the Standards Committee may specify;
- (x) suspension of that Member for a period up to a maximum of three months or until such time as he submits a written apology in a form specified by the Standards Committee;
- (xi) suspension of that Member for a period up to a maximum of three months or until such time as he undergoes such training or conciliation as the Standards Committee may specify.

Any sanction imposed shall commence immediately unless the Standards Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Standards Committee within six months of the date of the hearing.

- 11.2 The Chairman will then ask the Councillor to respond to the Investigating Officer's advice.
- 11.3 The Chairman will then ensure that each member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- 11.4 Any member of the Standards Committee may address questions to the Investigating Officer or to the Councillor as necessary to enable him/her to take such an informed decision.
- 11.5 The Chairman should then set out any recommendations which the Standards Committee is minded to make to the Council with a view to promoting high standards of conduct among Councillors and seek views of the Councillor, the Investigating Officer and the legal adviser.
- 11.6 The Standards Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Standards Committee will make to the Council.
- 11.7 At the completion of their consideration, the Standards Committee shall return to the main hearing room and the Chairman shall state the Standards Committee's decision as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with

the principal reasons for those decisions, and any recommendations which the Standards Committee will make to the Council.

**12. Reference back to the Ethical Standards Officer**

- 12.1 If, at any time before the Standards Committee has determined upon any appropriate sanction, the Standards Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Standards Committee, the Standards Committee may instruct the Monitoring Officer to request the Ethical Standards Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Standards Committee of the Ethical Standards Officer's response to such a request.

**13. The close of the hearing**

- 13.1 The Standards Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Councillor as soon as practicable after the close of the hearing.
- 13.2 The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.
- 13.3 Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Standards Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.

**14. Appeals**

- 14.1 The Councillor may appeal against the decision of the Standards Committee by writing to the President of the Adjudication Panel for England, ensuring that his letter sets out the grounds for such an appeal, includes a statement as to whether or not he consents to the appeal being heard by way of written representations, and is received by the President within 21 days of the date of the written notice of decision.

## **FOREST HEATH DISTRICT COUNCIL**

### **STANDARDS COMMITTEE HEARING**

#### **STANDARDS COMMITTEE HEARING – PROCEDURAL NOTES**

##### **1. Introduction**

- 1.1 Legal Adviser to confirm meeting quorate
- 1.2 Chairman to introduce Members, etc. Other parties to introduce themselves
- 1.3 Chairman to outline procedure

##### **2. Preliminary Matters**

- 2.1 Declaration of Interests
- 2.2 Apologies
- 2.3 Decide whether to proceed in Councillor's absence (if necessary)

##### **3. Consider the exclusion of the Press and Public**

- 3.1 Representations from Councillor/their representative and Investigating Officer
- 3.2 Committee to make decision on grounds specified

##### **4. Making findings of fact**

- 4.1 Are there any disagreements about the facts?
  - 4.1.2 If NO confirm this and proceed to point 5
  - 4.1.3 If YES proceed to 4.2
- 4.2 Process for findings of fact
  - 4.2.1 Investigating Officer to present report and call witnesses (if any). In relation to each witness called the following procedure will be adopted:-
    - Questions from the Investigating Officer
    - Cross examination by Councillor/their representative
    - Further questions from the Investigating Officer
    - Questions from Members
  - 4.2.2 Councillor/their representative to present report and call witnesses. In relation to each witness called, the following procedure will be adopted:-
    - Questions from the Councillor/their representative
    - Cross examination by the Investigating Officer
    - Further questions from the Councillor/their representative
    - Questions from Members



- 4.2.3 Committee to retire to make decision
- 4.2.4 Committee returns to announce decision

## **5. Did the Councillor fail to follow the Code?**

### **5.1 Process for considering whether or not there has been a failure to follow the code**

- Consider representations from the Councillor/their representative
- Investigating Officer has opportunity to question Councillor's representations
- Members have opportunity to question Councillor's representations
- Consider representations from the Investigating Officer
- Councillor's opportunity to question representations from Investigating Officer
- Members opportunity to question representations from Investigating Officer
- Councillor/their representative to have final say

### **5.2 Committee to retire to make decision as to whether or not Councillor failed to follow code**

### **5.3 Committee returns to announce their decision.**

5.3.1 If no breach consider any recommendations to the Council

5.3.2 If breach proceed to point 6

## **6. Consider the appropriate Sanction(s)**

### **6.1 Process to consider sanction(s)**

- Consider representations from the Investigating Officer and the Councillor/their representative
- Opportunity for Committee to question each side

### **6.2 Committee to retire to consider decision**

### **6.3 Committee returns to announce decision**

## **7. Consider recommendations to Council concerned**

## **8. Post Hearing**

### **8.1 Committee to prepare a short written decision to be signed by the Chairman**

### **8.2 Full written decision to be prepared and signed by the Chairman at the earliest opportunity**

### **8.3 Decision to be reported to all interested parties**

### **8.4 Summary to be published in local press**

## **FOREST HEATH DISTRICT COUNCIL**

### **PROTOCOL FOR THE USE OF RESOURCES BY COUNCILLORS**

#### **Introduction**

1. The purpose of this protocol is to provide a guide to the use of Council resources by Councillors.

#### **Resources Provided to Councillors**

2. The Council provides a range of facilities to support Councillors, including stationery, postage, photocopying, an email address and officer support to enable Councillors to carry out their duties as a Councillor.
3. Councillors, or anyone authorised by them, may only use these resources for Council business, such as correspondence relating to Council business or services or replying to letters from local residents.
4. The use of any Council resources for political purposes or election purposes would be a breach of the Council's Members' Code of Conduct unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the Member has been elected or appointed.
5. Provided that they are not in connection with political purposes, Councillors may make private telephone calls and use copiers for private copying in accordance with charges set by the Council from time to time.
6. Councillors are provided with an official Council email address for use as part of their duties as a Councillor. This email address may not be used for any political purpose unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
7. The email address should not be used in any ward newsletters which contain election material or which are distributed during any election period (which runs from the publication of the notice of election to the close of the polls).
8. Councillors supplied with a Council computer and internet connection facilities must sign the Council's standard agreement for the use of such IT equipment and services.

#### **Breach of this protocol**

9. Failure to comply with the requirements for the use of Council resources as set out in this protocol will be a breach of the Council's Members' Code of Conduct.

## **FOREST HEATH DISTRICT COUNCIL**

### **DEVELOPMENT CONTROL COMMITTEE - DECISION MAKING PROTOCOL**

The Development Control Committee usually sits once a month. The meeting is open to the general public and there are opportunities for members of the public to speak to the Committee prior to the debate.

#### **Decision Making Protocol**

This protocol sets out our normal practice for decision making on development control applications at Development Control Committee. It covers those circumstances where the officer recommendation for approval or refusal is to be deferred, altered or overturned. The protocol is based on the desirability of clarity and consistency in decision making and of minimising financial and reputational risk, and requires decisions to be based on material planning considerations and that conditions meet the tests of Circular 11/95: "The Use of Conditions in Planning Permissions." This protocol recognises and accepts that, on occasions, it may be advisable or necessary to defer determination of an application or for a recommendation to be amended and consequently for conditions or refusal reasons to be added, deleted or altered in any one of the circumstances below.

- Where an application is to be deferred, to facilitate further information or negotiation or at an applicant's request.
- Where a recommendation is to be altered as the result of consultation or negotiation:
  - The presenting Officer will clearly state the condition and its reason or the refusal reason to be added/deleted/altered, together with the material planning basis for that change.
  - In making any proposal to accept the Officer recommendation, a Member will clearly state whether the amended recommendation is proposed as stated, or whether the original recommendation in the agenda papers is proposed.
- Where a Member wishes to alter a recommendation:
  - In making a proposal, the Member will clearly state the condition and its reason or the refusal reason to be added/deleted/altered, together with the material planning basis for that change.
  - In the interest of clarity and accuracy and for the minutes, the presenting officer will restate the amendment before the final vote is taken.
  - Members can choose to
    - delegate the detailed wording and reason to the Assistant Director (Planning and Regulatory)
    - delegate the detailed wording and reason to the Assistant Director (Planning and Regulatory) following consultation with the Chair and Vice Chair of Development Control Committee.
- Where Development Control Committee wishes to overturn a recommendation and the decision is considered to be significant in term of overall impact/harm to the planning policy framework, having sought advice from the Assistant Director (Planning and Regulatory) and the Assistant Director (HR, Legal and Democratic Services) (or Officers attending Committee on their behalf):

- A final decision on the application will be deferred to allow associated risks to be clarified and conditions/refusal reasons to be properly drafted.
  - An additional officer report will be prepared and presented to the next Development Control Committee detailing the likely policy, financial and reputational etc risks resultant from overturning a recommendation, and also setting out the likely conditions (with reasons) or refusal reasons. This report should follow the Council's standard risk assessment practice and content.
  - In making a decision to overturn a recommendation, Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity.
- In all other cases, where Development Control Committee wishes to overturn a recommendation:
    - Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity.
    - In making a proposal, the Member will clearly state the condition and its reason or the refusal reason to be added/deleted/alterd, together with the material planning basis for that change.
    - Members can choose to
      - delegate the detailed wording and reason to the Assistant Director ( Planning and Regulatory)
      - delegate the detailed wording and reason to the Assistant Director (Planning and Regulatory) following consultation with the Chair and Vice Chair of Development Control Committee
- Member Training
    - In order to ensure robust decision-making all members of Development Control Committee are required to attend annual Development Control training.

## Notes

Planning Services (Development Control) maintains a catalogue of 'standard conditions' for use in determining applications and seeks to comply with Circular 11/95 "The Use of Conditions in Planning Permissions."

Members/Officers should have proper regard to probity considerations and relevant codes of conduct and best practice when considering and determining applications.



# Forest Heath

## District Council

### PROTOCOL

for the recording of Cabinet Committee and Council meetings  
(including audio recordings and Committee Administrator's notes)

**Adopted July 2005**

**Amended May 2005**

**Amended May 2009**

## **PROTOCOL FOR THE RECORDING OF CABINET COMMITTEE AND COUNCIL MEETINGS (INCLUDING AUDIO RECORDINGS AND COMMITTEE ADMINISTRATOR'S NOTES)**

### **LEGAL REQUIREMENTS**

Pursuant to the Local Government Act 1972 the Council is legally required to produce minutes of its meetings and once subsequently confirmed as a true record by the subsequent cabinet or committee meeting and Council alike, these minutes become the official record of the meeting in question. These minutes shall then be open for public inspection for six years commencing with the date of the meeting. If the minutes contain exempt information, a written summary of the minutes shall be produced without disclosing the said exempt details.

The Council's policy is that save for the above legal requirements there will be no other record retained of the meetings which could cast any doubt on the accuracy of the official record. For the avoidance of doubt once the minutes are approved as a correct and true record any Committee Administrator notes shall then be destroyed; these notes are in any event not an official record of the meeting but simply an aide-memoire for the benefit of the Officer preparing the minutes.

### **INSTALLATION OF AUDIO-VISUAL SYSTEM**

The Council has approved the installation of an audio-visual system within the Council Chamber which will facilitate the provision of hard disk recordings of proceedings. Whilst there is no obligation to do so the Council will record the proceedings and take possession of the sole copy recording immediately at the end of the meeting.

An exception to the 'Protocol for the Recording of Cabinet, Committee and Council Meetings (including audio recordings and committee administrator's notes)' be granted to

enable the Cabinet and the Overview and Scrutiny Committee to hold occasional/special meetings out in the community, in line with best practice.

The purpose of the recordings is to confirm a procedural point or a precise wording during preparation of the minutes, alongside the Committee Administrator's notebook. Once the minutes, which are the legally required record of the meeting, are approved, the recording will be retained for a further 12 months solely to determine a complaint to the Council's Standards Committee or the Standards Board for England. A separate procedure will be in place determining responsibility for the operation of the recording machine, custody of the tapes and subsequent security/destruction.

The public has a simple legal right of access to viewing the minutes of a meeting and to view these as the official record of that meeting. All requests by the public to listen or view the recordings prior to their destruction shall be refused, as will the policy to view the Committee Administrator's personal notes.

In the event of a query arising before approval of the minutes by Members which shows a genuine need to clarify any points or matters the Chief Executive or a Director will authorise the preparation of a transcript for the relevant part of the meeting. The approval of the minutes will then be held over to the next appropriate meeting and the recording for that meeting then retained and ultimately destroyed in accordance with this Protocol. The form at Appendix 1 will be used to request the preparation of a transcript.

On a Member's request to the Chief Executive or a Director to hear a recording on the form laid down, the Chief Executive or Director will arrange a time and place for the recording to be heard. In attendance will be the Committee Administrator who clerked the meeting in question or another Committee Administrator if not available.

- Any Member may hear a recording of public information from a meeting held in public.
- Only a Member of the Cabinet or Committee who attended the meeting in question may hear a recording of exempt or confidential information from a meeting held after exclusion of the public.
- The Member may request another Member who meets the requirements above to be present when the recording is heard.

Under no circumstances will the recording leave the building unless under authority given by full Council.

For clarification purposes this Protocol shall likewise also apply to the minutes of sub-committees and working groups of both Council and Cabinet.

IT WILL CONTINUE TO BE THE PRACTICE THAT MEMBERS DO NOT HAVE ACCESS TO OFFICERS' PERSONAL NOTES OF MEETINGS AFTER APPROVAL OF THE MINUTES.

July 2005  
DWB/JO/3.9.47  
Amended May 2006  
DWB/PAH/3.9.47  
Amended 13 May 2009  
DWB/PAH/3.9.47  
  
Amended 9 May 2012





**Forest Heath**  
District Council

**RECORDING OF MEETINGS**

**TERMS FOR OBTAINING ACCESS TO TRANSCRIPT OR RECORDINGS FOR  
MEMBERS OF THE COUNCIL**

1. Requests shall be in writing to the Chief Executive or Director using the form overleaf which should clearly refer to the relevant part of the proceedings required.
2. Members shall have regard to their obligations under this Council's Code of Conduct for the time being adopted under Section 51 of the Local Government Act, 2000, when giving a reason(s) for their request.
3. Recordings will only be made available if the portion of the proceedings asked for is 15 minutes or less in duration, as it is time consuming to make longer extracts available.
4. NOTE: Given the work pressures within the Committee Section and the Council generally it may not always be possible to meet Members' wishes by the date requested.
5. Members shall not make further copies of any recording.
6. Recordings will not be taken from the District Offices.
7. Members will only hear a recording in the presence of the Committee Administrator who clerked the meeting or a substitute if not available.

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**FOR OFFICE USE (Committee Section)**

Date Recording played



**Forest Heath**  
District Council

**To the:** Chief Executive/ Director  
Forest Heath District Council  
District Offices  
College Heath Road  
Mildenhall  
Suffolk IP28 7EY

PLEASE COMPLETE IN CAPITAL LETTERS,  
EXCEPT WHEN SIGNING

**Name of Member:**

**Address of Member:**

**Daytime Tel. No.**

**REQUEST TO HEAR RECORDING OF PART OF MEETING OR TO HAVE A  
TRANSCRIPT**

I hereby request the following:

- (a) a transcript
- (b) to hear the recording
- (delete as appropriate)

Meeting

Date

Part required  
(please specify as  
precisely as possible)  
Reason(s) for request to  
clarify minutes

Date transcript required, if  
possible

I have read and understand the Protocol and terms overleaf and agree that the provisions of Forest Heath District Council's Code of Local Government conduct for the time being adopted under Section 51 of the Local Government Act 2000, shall apply in relation to the contents of any item received in response to this request, as they apply to all other aspects of my duties as a Member of this Council.

**Signed:** .....

**Date:** .....

## **FOREST HEATH DISTRICT COUNCIL**

### **PROTOCOL FOR PUBLIC PARTICIPATION AT COUNCIL, COMMITTEE AND SUB-COMMITTEE MEETINGS (EXCLUDING DEVELOPMENT CONTROL COMMITTEE AND CABINET)**

1. Members of the public are invited to put questions/statements of not more than three minutes duration relating to items to be discussed in the public part of the agenda at meetings of the Council, Committees and Sub-Committees (other than the Development Control Committee). The three minutes may be extended at the sole discretion of the Chairman of the Council, Committee or Sub-Committee, as the case may be.
2. A decision must be made as to whether those wishing to participate should speak from the public gallery or be allowed to sit downstairs. Seating downstairs will only be available if persons make it known in advance that they wish to speak and in all cases for people with disabilities.
3. The Chairman will invite speakers in the order that he/she wishes. Representatives of the press are considered to be members of the public and may also participate.
4. Speakers may speak on more than one item on the agenda and may ask a supplementary question or make a further comment on an item at the discretion of the Chairman (subject to the three minute rule mentioned in paragraph 1. above).
5. The Chairman will decide who shall reply to a question or comment on a statement if appropriate.
6. It should be remembered that questions do not have to be answered immediately. They can be noted and answers sent later in writing.
7. The Chairman must ensure that debate does not start on an item at this point on the agenda. Points made should be noted for when the item is discussed later on the agenda.
8. The Chairman has discretion to limit the number of speakers and the time taken for questions/statements if it appears that time wasting and/or repetition is taking place or where there are a large number of people wanting to speak.
9. The Council has a complaints procedure which is available from the Council Offices, by telephoning the Council or upon request from any of the officers named in the Constitution.

## **Explanation of the words we have used**

### **Committee Section**

Officers working in the Committee Section make arrangements for committee meetings.  
Telephone: 01638 719362.

### **Delegated Powers**

The majority of planning and related applications are determined under delegated powers by the Development Control Manager without having to refer them matter to the Development Control Committee for a decision. The government expects at least 90% of applications to be determined this way.

### **Development Control Committee**

The Development Control Committee meets approximately every 4 weeks and makes decisions about planning applications and related matters.

### **Forest Heath Local Plan**

This plan provides a framework for development and conservation in the district, showing where land can be used for housing, employment, recreation etc.

### **Full Council**

The Full Council meets to consider reports from all the Committees. In most cases, the Committees make decisions themselves but sometimes a matter is referred to Full Council with a recommendation.

### **Planning & Development Control Officers**

Planning officers responsible for dealing with planning applications work in the Development Control section. Telephone: 01638 719480.  
Planning officers dealing with planning policy work in the Forward Planning section.  
Telephone: 01638 719260.

### **Structure Plan**

This plan covers the whole county and provides a strategic framework covering the way land should be used, highways etc.

## **District Councillor**

There are 27 ward Councillors representing the 14 wards of the Forest Heath District. Not all of them sit on the Development Control Committee. To find out who your councillor is or the membership of the Development Control Committee ask for a leaflet or ring Forest Heath District Council on 01638 719000.

## **FOREST HEATH DISTRICT COUNCIL**

### **RIGHTS OF THE PUBLIC RELATING TO ACCESS TO INFORMATION**

These rules apply to all meetings of the Council, Committees, Sub-Committees and the Standards Committee (together called meetings). Access to Information rules relating to meetings of the Cabinet are set out in previous Articles of the Constitution.

### **ADDITIONAL RIGHTS TO INFORMATION**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

### **RIGHTS TO ATTEND MEETINGS**

Members of the public may attend all meetings subject only to the exceptions in these rules.

### **NOTICES OF MEETING**

The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Council's designated office.

### **ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors) will be open to inspection for the time the item was added to the agenda.

### **SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the proper officer thinks fit, copies of any other documents supplied to Councillors in connection with an item to any person on payment of a charge for postage and any other costs.

### **ACCESS TO MINUTES ETC AFTER THE MEETING**

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with any reasons, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **BACKGROUND PAPERS**

### **7.1 List of background papers**

The Proper Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information.

### **7.2 Public inspection of background papers**

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## **SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Council's offices.

## **EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS (SEE ALSO EXCLUSION OF PRESS AND PUBLIC - ISSUES FOR CONSIDERATION LATER)**

### **9.1 Confidential information – requirement to exclude public**

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

### **9.2 Exempt information – discretion to exclude public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.



Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

### 9.3 Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

### 9.4 Meaning of exempt information

Exempt information means information falling within the categories set out below (as qualified) and satisfying the public interest test described at the foot of the table.

Category	Qualification
1. Information relating to any individual	None
2. Information which is likely to reveal the identity of an individual	None
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)	Information falling within this paragraph is not exempt information if it is required to be registered under- (a) the Company Act 1985; (b) the Friendly Societies Act 1974 (c) the Friendly Societies Act 1992 (d) the Industrial and Provident Societies Acts 1965 to 1978; (e) the Building Societies Act 1986; or (f) the Charities Act 1993 "financial or business affairs" includes contemplated, as well as past or current, activities
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	"labour relations matter" means- (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or (b) any dispute about a matter falling within paragraph (a) above "employee" means a person employed under a contract of service "office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds

Category	Qualification
	any such office or is an employee of the authority”
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	None
6. Information which reveals that the authority proposes- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	None
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	None

All information that falls within category 1 to 7 above is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Information falling within any of these paragraphs is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992 (SI 1992/1492). See also the definitions of “the authority” in Part 3 of Schedule 12A.

## **EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

## **THE STANDARDS COMMITTEE**

There are special rules which apply to meetings of the Standards Committee under the Relevant Authorities (Standards Committee) Regulations 2001 SI 2812, which enable matters to be dealt with in private at meetings of the Council’s Standards Committee. Similarly, documentation does not need to be made available to the press and public; though reports to full Council from the Standards Committee will fall within the general access to information rules.

## **THE FREEDOM OF INFORMATION ACT 2000**

Under the Freedom of Information Act 2000 anyone can ask the Council for information which it holds. A great deal of routine information about Forest Heath and our services can be given directly in response to telephone calls and letters. A specific request must include your name and an address where we can reply to you. An e mail address is sufficient.

To help you, we have compiled a Publication Scheme. This is a list of everything we publish, and any prices that may apply. Our current scheme can be downloaded from our website or you can ask for a paper copy

You should receive the information in four weeks (20 Working Days). If we are unable to provide the information (or part of it), we will explain why. The Council may decline your request, if the information you are seeking is within an exemption under the Freedom of Information Act.

Find out more about Freedom of Information at the website of the Information Commissioner at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) or contact our Freedom of Information Coordinator on 01638 719000.

## FOREST HEATH DISTRICT COUNCIL

### EXCLUSION OF PRESS AND PUBLIC - ISSUES FOR CONSIDERATION

1. At the meeting, Members will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.
2. The Members must act in accordance with Article 6 of the European Convention on Human Rights (ECHR) which was brought into effect in this country by the Human Rights Act 1998. Article 6 gives a right to a fair and public hearing by an independent and impartial tribunal. It provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the “trial” in the interests of:
  - a. morals
  - b. public order
  - c. national security in a democratic society
  - d. where the interests of juveniles or the protection of the private life of the parties so require, or
  - e. in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Councillors or the Officers can demonstrate over-riding reasons within one of these five headings above for the press and public to be excluded.

3. Article 8 of the ECHR provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Council) with the exercise of this right except such as is:
  - a. in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972), and
  - b. necessary in a democratic society in the interests of:
    - i. national security
    - ii. public safety
    - iii. the economic well-being of the country
    - iv. the prevention of crime or disorder
    - v. the protection of health and morals (which would include the protection of standards of conduct in public life), or
    - vi. the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence therein, so that the presumption of a public hearing set out in Article 6 would appear to come within the exception set out in paragraph b.v. above, unless either the Officers or the Councillors demonstrate to the meeting's satisfaction that a public hearing is not necessary for that purpose and that the

interest of protecting the privacy of the Councillor or of the authority should override that public interest.

4. Where the Members conclude that the interest of protecting the privacy of the Councillor or of the authority should override the public interest in a public hearing, the Members remain bound by the provisions of the Local Government Act 1972, as primary legislation. Accordingly the press and public may only be excluded from all or part of the meeting if the meeting is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case the meeting has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
5. Where the meeting does not resolve to exclude the press and public from the meeting, the Proper Officer will then be required to provide copies of the agenda and reports to the press and public and other members of the authority, and to permit inspection of any background papers if so required.

## FOREST HEATH DISTRICT COUNCIL

### DECISION MAKING PRINCIPLES

Good decision making goes beyond observing the often rehearsed legal requirements to have regard to all relevant considerations and ignore all irrelevant factors set out in **Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1KB223**. It involves the realistic evaluation of alternatives and due consultation through effective access for the public to decision making and decision makers.

A range of people and bodies may take binding decisions on behalf of the Council, including Committees and Sub-Committees which act on Officer reports or Officers who operate under delegated authority. It is outside the scope of this document to attempt to prescribe an exhaustive list of principles which the Council should observe when making decisions. However decision-makers should follow the principles of decision-making contained in paragraph 7.3 of the DETR Guidance:

- (i) proportionality (i.e. the action must be proportionate to the desired outcome);
- (ii) due consultation and the taking of professional advice from Officers;
- (iii) respect for human rights;
- (iv) a presumption in favour of openness; and
- (v) clarity of aims and desired outcomes.

In certain types of decisions it may also be necessary to state what options were considered and to give reasons for the decision.

The Council, a Councillor or an Officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will need to follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

Many of the licensing and enforcement functions of ordinary Committees will entail them acting in a quasi judicial capacity. Standards Committees may also need to be particularly aware of these issues. The principles of natural justice would need to be followed in these cases along with any special rules which may be applicable. A fair procedure must be followed, which is free from bias. Justice must not only be done it must be seen to be done.

Councils should give particular consideration to ways in which human rights can be considered at an early stage in the decision making process.

## **TERMS OF INDEMNITY FOR COUNCILLORS AND OFFICERS**

1. The Forest Heath District Council will, subject to the exceptions set out below, indemnify each of its councillors and officers against any loss or damage suffered by the councillor or officer arising from his/her action or failure to act in his/her capacity as a councillor or officer of the Council. In this indemnity the term "councillor" includes co-opted members of the Standards Committee.

This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- 1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the councillor or officer;
  - 1.2 any act or failure to act by the councillor or employee otherwise than in his/her capacity as a councillor or officer of the Council, or
  - 1.3 failure by the councillor to comply with the Council's Code of Conduct for Councillors.
2. The Council will, subject to the exceptions set out below, indemnify each of its councillors and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he/she is subject.
  - 2.1 "Criminal proceedings" includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom.
  - 2.2 "Part 3 proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Council's Code of Conduct for Councillors under Part 3 of the Local Government Act 2000.
  - 2.3 This indemnity will not extend to Part 3 proceedings where the allegation has been referred to the Monitoring Officer for local investigation and/or determination by the Council's Standards Committee.
  - 2.4 This indemnity shall not extend to any advice or representation in respect of any claim or threatened claim in defamation by or against the councillor or officer.
  - 2.5. Where any councillor or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Part 3 proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the councillor or officer has made use of this indemnity –
    - 2.5.1 the councillor or officer is convicted of a criminal offence in consequence of such proceedings, or
    - 2.5.2 a Case Tribunal or the Council's Standards Committee determine that the councillor has failed to comply with the Code of Conduct for Councillors and the conviction or determination is not overturned on

appeal, the councillor shall reimburse the Authority for any sums expended by the Authority pursuant to the indemnity.

- 2.6 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 2.5 shall apply as if references to the Authority were references to the Council's insurer.
3. For the purpose of these indemnities, a loss or damage shall be deemed to have arisen to the councillor or officer "in his/her capacity as a councillor or officer of the Authority" where:
  - 3.1 The act or failure to act was outside the powers of the Council, or outside the powers of the councillor or officer, but the councillor or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the councillor or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;
  - 3.2 The act or failure to act occurred not in the discharge of the functions of the councillor or officer as a councillor or officer of the Council but in their capacity as a councillor or employee of another organisation, where the councillor or officer is, at the time of the action or failure to act, a councillor or employee of that organisation either –
    - 3.2.1 in consequence of his/her appointment as such councillor or officer of that organisation by the Council; or
    - 3.2.2 in consequence of his/her nomination for appointment as such councillor or officer of that organisation by the Council; or
    - 3.2.3 where the Council has specifically approved such appointment as such a councillor or employee of that organisation for the purpose of these indemnities.
4. The Council undertakes not to sue (or join in action as co-defendant) an officer of the Council in respect of any negligent act or failure to act by the officer in his/her capacity as an officer of the Council, subject to the following exceptions:
  - 4.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
  - 4.2 Any act or failure to act by the officer otherwise than in his/her capacity as a councillor or officer of the Council.
5. These indemnities and undertaking will not apply if a councillor or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the resolution.
6. These indemnities and undertaking are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.



7. These indemnities and undertaking shall apply with effect from 19th October 2005 and shall continue to apply after the councillor or officer has ceased to be a councillor or officer of the Council as well as during his/her councillorship of or employment by the Council.

**OVERVIEW AND SCRUTINY COMMITTEE**  
**CALL-IN REQUEST FORM**

**To: Assistant Director (HR, Legal and Democratic Services)**

**I would like to call-in the decision as detailed below:**

**Decision making body (Cabinet or Portfolio Holder)**

**Date decision made:**

**What was the Decision made by Cabinet or Portfolio Holder:**

**If the reason for the call-in is that the decision was outside the Budget and Policy Framework Procedure Rules, please give an explanation**

**What action would you like to see the Cabinet / Portfolio Holder take to address the concerns outlined in the call-in, or what needs to be done to strengthen their decision?**

**At what stage did you inform the Portfolio Holder or the Leader of the Council that you had concerns over this planned decision? If not a planned decision (that is if the decision did not appear on the Decisions Plan), what attempts did you make to speak to the Portfolio Holder before calling in the decision?**

**Please state which of the principles for decision making set out in Article 12 of the Constitution has/have been breached (please tick)**

		<b>TICK</b>
1	The decision was not reasonable within the common meaning of the word, ie it was not a rational decision based on sound judgement.	
2	The decision was not reasonable within the legal meaning of "reasonableness", ie all relevant considerations were not fully taken into account in reaching the decision and all irrelevant ones disregarded.	
3	In the case of 'quasi-judicial' decisions (ie a decision as to whether or not to grant a licence) a fair hearing was not conducted in accordance with the rules of natural justice to the person who was the subject of the decision.	
4	The decision was not proportionate (ie the action was not proportionate to the desired outcome).	
5	The decision was not taken on the basis of due consultation and professional advice from officers.	
6	Human rights were not respected and consideration was not given as to whether the decision would give rise to any implications under the Human Rights Act 1998 and the European Convention on Human Rights.	
7	The decision was not taken in compliance with Council's schemes of delegation, financial rules and instructions relating to contracts.	
8	When making the decision, a presumption in favour of openness was not applied and a clarity of aims and desired outcomes was not displayed.	
9	Careful consideration was not given as to whether there was an interest that should have been declared;	
10	In the case of an executive decision taken by the Cabinet, or an individual Member of the Cabinet, or an Officer (where the decision is closely connected with	

	the Cabinet), a proper record of the decision was not made together with a record of the reasons for the decision, details of any alternative options considered and rejected and any conflicts of interest.	
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**Referring to the box(es) ticked above, please explain how the principles set out in Article 12 of the Constitution have not been met, and provide documentation or evidence, where appropriate to support the call-in:**

**Suggested Witnesses (Internal/External) to be invited and their relevance to the call-in**

**Members calling in the decision** (Call-in to be requested by any five members of the Council)

Name of Councillor		Signed	Will you be attending the call-in meeting?
1	(Lead on Call-in)		
2			
3			
4			
5			

Once completed, either by hand or electronically, please send to the Assistant Director (HR, Legal and Democratic Services) **BY 5PM ON THE DEADLINE DATE PUBLISHED ON THE CABINET DECISION NOTICE**, otherwise the call-in will not be valid.

Amended: March 2015 (Constitutional Review)

## **CONFIDENTIAL INFORMATION PROTOCOL**

- 1.1 A Protocol to support Paragraph 4 (iv) of the Members' Code of Conduct which allows for the disclosure of confidential information by a Member where the disclosure is reasonable, in the public interest, made in good faith and complies with the reasonable requirements of the Council.
- 1.2 **This Protocol sets out the reasonable requirements of the Council:**
- (1) That careful consideration is given to the question of whether to make the disclosure and if the disclosure is made, the Member retains a note of the main considerations in reaching that decision.
  - (2) That the content of Cabinet/Committee reports, minutes or appendices that are marked as confidential items will not be disclosed without the prior written agreement of the relevant Chief Officer or author of the report who will re-consider the need to retain confidentiality under the provisions relating to exempt information under Schedule 12A of the LGA 1972 and the Freedom of Information Act 2000.
  - (3) That the detail of legal or other professional advice is not disclosed without the prior written agreement of the relevant Chief Officer.
  - (4) That the Council's policy on whistle-blowing and any guidance on reporting concerns are considered.
  - (5) That the current Member/Officer Protocol is considered.
  - (6) That the Members' Code of Conduct and associated guidance is considered.
  - (7) That the advice of the Monitoring Officer or Deputy Monitoring Officer is sought prior to disclosure of the information unless agreement has already been secured under (2) or (3) above.
- 1.3 Agreement to the disclosure of confidential information may be with or without conditions.
- 1.4 In instances involving particularly sensitive or highly confidential information, a Member may be asked to sign a confidentiality notice before information is released to them. In such cases, it would be the Council's expectation that the information is not disclosed.

## **OVERVIEW AND SCRUTINY COMMITTEE**

### **TASK AND FINISH GROUP PROTOCOL**

- 1) A Task and Finish Group will be appointed by the Overview and Scrutiny Committee as an informal Member Group set up for the purpose of researching ad-hoc issues relating to policy development or scrutiny. It will consist of:
  - a) 3-5 elected members reflecting broad political balance, where possible, and appointed on the basis of their relevant knowledge and interest. (*Membership of a Task and Finish Group is not restricted to only Overview and Scrutiny members*); and
  - b) A number of co-opted partners/community representatives and members appointed because of their specialist knowledge/and or expertise. *Co-opted members will be "non-voting" members of the Task and Finish Group.*
- 2) The Overview and Scrutiny Committee will set the framing terms of reference of the Task and Finish Group; the issue to be researched and the reasons; timescales to be agreed at the outset by the Overview and Scrutiny Committee giving a remit suitable to guide the actions of a short-term Task and Finish Group.
- 3) The Task and Finish Group will commence by producing an outline scope/project plan/work plan, including planned meetings to link effectively with scheduled Overview and Scrutiny meetings and involve relevant Cabinet Members on Policy Development research.
- 4) The Task and Finish Group will update the Overview and Scrutiny Committee as necessary to deliver the project plan and make recommendations to the Overview and Scrutiny Committee and produce a final written report. This will be presented to the Overview and Scrutiny Committee as a basis for further discussion and development. The report will document the Task and Finish Groups findings; evidence and recommendations; including, if appropriate, alternative views discussed and considered.
- 5) There is no requirement to meet in public or give five days notice of meetings as this is an informal group. As such no formal minutes will be produced, only bullet point notes, not for publication. Meetings to be attended by the Scrutiny Officer and additional officers may be requested to attend for professional support and guidance in the service area being researched.

## **(Forest Heath District Council & St Edmundsbury Borough Council)**

### **Councillor Call for Action Protocol**

#### **1. Introduction**

- 1.1 The "Councillor Call for Action" (CCfA) was introduced under Section 119 of the Local Government and Public Involvement in Health Act 2007 (the Act), and came into force on 1 April 2009. *The statutory requirement to implement CCfA by 1 April 2009 applies to all councils in England (with the exception of parish councils) regardless of their Executive arrangements.*
- 1.2 The Act enables any member of the Council to refer to the Overview and Scrutiny Committee any **local government matter** or any **crime and disorder matter** which affects their ward/division.<sup>1</sup>
- 1.3 The power to refer a matter is available only where the matter is of direct concern to the ward or division which the councillor represents. A councillor can refer a matter even if no citizen has asked him/her to consider it, and there is no requirement for councillors in multi-member wards to agree – any of them can refer a matter.

#### **2. Limitations**

- 2.1 It is important to recognise that CCfA is not guaranteed to solve a given problem. CCfA can provide a method for discussing such problems and, through discussion, trying to overcome them.

#### **3. Issues excluded from referral as a CCfA**

- 3.1 The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 excludes the following matters from referral as a CCfA:
- Individual complaints concerning personal grievances or commercial issues.
  - Any matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman), for example:
    - Planning and licensing applications and appeals
    - Council Tax/Housing Benefits complaints and queries
    - Issues currently under dispute in a court of law
  - Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or any of its sub-committees.<sup>2</sup>
- 3.2 A referral, provided it is not an excluded matter (see above); will ensure that the matter is included on the agenda of the Overview and Scrutiny Committee. It is then up to the members of the Committee to decide whether or not to take the matter further.

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<sup>1</sup> For definition of a local government matter and a local crime and disorder matter please see explanatory notes pages at Appendix 3.

<sup>2</sup> For definition of vexatious and discriminatory matters please see explanatory notes pages at Appendix 3.

- 3.3 A referral made to the Overview and Scrutiny Committee is seen as being at the end of the CCfA process (**the last resort**) and not the first step.

#### **4. Steps to be taken, prior to making a Councillor Call for Action referral**

- 4.1 Prior to a councillor referring a matter as a CCfA to the Overview and Scrutiny Committee, a councillor **must** have tried to resolve the issue/problem themselves using all mechanisms and resources available to them at ward level. Councillors should:

- If a local crime and disorder matter, raise the issue through the Community Safety Partnership to find a way to resolve the issue.
- Ensure that all relevant partner organisations have been informed of the issue and given enough time to resolve the issue, for example through formal letters written on behalf of constituents, discussion at public meetings, petitions, communication with local MPs and councillors in other authorities etc.
- Ensure that all relevant internal potential routes to solution have been followed, for example informal discussions with officers and/or members, questions at committees, motions on the agenda at full Council etc.
- Ensure that this is not an issue that is currently being or should be pursued via the Council's complaints procedure.
- Ascertain whether or not any other form of local scrutiny is investigating the issue, eg Suffolk County Council.

#### **5. How to make a Councillor Call for Action referral**

- 5.1 If the issue/problem is still not resolved the councillor can refer it to the Overview and Scrutiny Committee as a "Councillor Call for Action". To do this the councillor should complete and submit to the Scrutiny Officer a CCfA Request Form outlining what the issue is and what steps have been taken towards a resolution. The request form is attached as Appendix 1, is available on the Council's Intranet, or from the Scrutiny Officer. The request form for a CCfA includes:

- The name of the councillor and ward they represent.
- Title of the CCfA and date of submission.
- A brief synopsis of what the main areas of concern are?
- Which organisations have been contacted in trying to resolve the issue.
- Responses received from those organisations.
- Whether the Committee has considered a similar issue recently, and how this issue differs from that?
- Whether the issue should be considered through the Council's Complaints Procedure?
- Whether the issue relates to a quasi-judicial matter such as development control or licensing?

- Whether a similar or related issue is the subject of a review on the current work programme?
- Whether the issue is currently being looked at by another form of local scrutiny?
- The potential for scrutiny of the issue to produce real improvements?
- Whether the CCfA is currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints process.
- Whether there are any deadlines associated with the CCfA of which the Overview and Scrutiny Committee needs to be aware?

5.2 Members are required to produce all their evidence regarding actions already taken in relation to the issue, and responses received from organisations contacted, at the time of submitting the CCfA Request Form.

5.3 The Scrutiny Officer will receive the referral form either by post or electronically, log it to track its progress, and, with the advice of the Service Manager (Legal), assess the issue to ensure that it is not a matter excluded from referral to the Overview and Scrutiny Committee.

5.4 The Service Manager (Shared Legal) will, if necessary, advise the Member that more evidence should be added in any section of the CCfA submission, although it will be the decision of the referring Councillor as to whether he or she chooses to provide more evidence, or wishes to submit the form in its original state.

5.5 The Scrutiny Officer will inform the Chairman of the Overview and Scrutiny Committee that the item will be included on the next Committee agenda. The councillor will be informed whether or not their referral has been successful.

5.6 A successful referral will ensure that the CCfA will be placed on the next agenda of the Overview and Scrutiny Committee. It is then up to the members of the Committee to decide whether or not to take the matter further.

## **6. Decision of the Committee whether to take the matter further**

6.1 In deciding whether or not to take the matter further the Committee will consider:

- Anything that the councillor has done in relation to this matter; and
- Representations made by the councillor as to why the Committee should take the matter up. (Councillors have the option of either presenting their CCfA form without supporting papers, or by preparing a report setting out their views. Any reports prepared by councillors would be circulated, along with the agenda and other reports for the meeting). *This information will need to take account of the disclosures of exempt information as prescribed in Part 1 of Schedule 12A of the Local Government Act 1972.*

6.2 The criteria the Committee will use to decide whether or not to take the matter further include:



- Is the Committee satisfied that all reasonable attempts have been made to resolve the issue by the ward councillor? And do the responses received by the referring councillor demonstrate that the matter is not being progressed?
- Has the Committee considered a similar issue recently – if yes had the circumstances or evidence changed?
- Is there a similar or related issue which is the subject of a review on the current work programme? It may be more appropriate to link the new issue to an existing review, rather than hold a separate CCfA hearing. Relevant time pressures on resolving the CCfA should be taken into account.
- Have all relevant service areas or partner organisations been informed and been given enough time to resolve the issue? What response has the councillor received?
- Is this a case that is being or should be pursued via the Council's corporate complaints procedure?
- Is it relating to a "quasi-judicial" matter or decision such as planning or licensing?
- Is the issue part of an individual's own personal agenda (an issue of genuine local concern should have an impact on the local community).
- Is this an issue currently being looked at by another form of local scrutiny, e.g. Suffolk County Council?
- And, as with all scrutiny, does the matter referred have the potential for scrutiny to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring member's ward?

6.3 In considering the CCfA, the Overview and Scrutiny Committee may invite the relevant Portfolio Holder, Chief Executive, Director, Assistant Director or external organisation to discuss the issue with the Overview and Scrutiny Committee and answer any questions.

6.4 If the committee decides not to accept the CCfA referral it must inform the councillor and provide reasons.

6.5 If the Committee decides to accept the CCfA referral, it must decide how it intends to take the matter forward and include the CCfA in its work programme. This could include:

#### **Before holding a formal hearing:**

- A meeting taking place between the Chairman and Vice-Chairman of the Overview and Scrutiny Committee, relevant officers, Scrutiny Officer, Assistant Director (HR, Legal and Democratic Services), Services Manager (Shared Legal) and the Member submitting the CCfA at which a definitive list of witnesses for the CCfA hearing will be drawn up together with question plans for each witness as appropriate.
- Asking the service area(s)/partner organisation(s) to respond to the CCfA.
- Setting up a research group to undertake a more in depth review.

### **At formal hearing<sup>3</sup>**

- Asking for further evidence and/or witnesses to be brought to a future meeting then making recommendations to the relevant service committee/partner organisation.

## **7. Potential outcomes**

7.1 Following a formal hearing, there are a number of potential outcomes from the Committee meeting:

- The Committee could determine not to make a report or recommendations (perhaps because it is not considered the right time to consider a particular issue), with the ward councillor notified in writing;
- The Committee could determine that it is a complex issue that requires further investigation and commission a scrutiny review of the issue;
- The Committee could write a report and make recommendations on the CCfA to Cabinet and/or partners.

7.2 Once the Committee has completed its work on the CCfA referral the member who made the CCfA referral will receive a copy of any report or recommendations made. The reply will also be made available on the Councils website, unless the matter was an exempt item, in which case the report cannot be made public.

## **8. Timescales**

8.1 Once a CCfA has been assessed as not being a matter which is excluded from referral to the Overview and Scrutiny Committee, the item will be included on the next Committee agenda.

8.2 If the Committee agrees to take the matter forward, the hearing will usually be held as an item on the next available agenda. In exceptional circumstances, for example where there are unavoidable time constraints, a separate meeting may be convened.

8.3 Should a CCfA hearing result in recommendations to Cabinet being made, the Cabinet will usually respond to the recommendations, setting out any action it intends to take, within 28 days of the date of the Cabinet agenda on which the recommendations were placed.

8.4 Should a CCfA hearing result in recommendations to partner organisations, such organisations will also be requested to make a response to the recommendations, although they are under no legal obligation to do so.

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<sup>3</sup> Any formal hearing will be run along similar lines to a call-in hearing. Please see explanatory notes pages at Appendix 3 for further details.

## **Appendix 1**

### **Councillor Call for Action Request Form**

This form should be used by any Councillor who would like the Overview and Scrutiny Committee to consider a Councillor Call for Action in their ward.

**Councillor:**

**Address/contact details:**

**The Ward you represent:**

**Title of your Councillor Call for Action:**

**Date of Submission:**

**Please give a brief synopsis of the main areas of concern, including any community groups affected by the CCfA**

## Evidence Section

**Which organisations have you contacted in trying to resolve this issue (please attached relevant documentation)**

**What responses have been received from those organisations, and how do those responses demonstrate that the matter is not being progressed? In particular, have the organisations been given sufficient time to progress the issue (please attach relevant documentation)**

**Has the Committee considered a similar issue recently – if yes, please evidence how the circumstances or evidence have changed**

**Is this a case that is being or should be pursued via the Council's corporate complaints procedure?**

**Is it relating to a "quasi-judicial" matter or decision such as planning or licensing?**

**Is there a similar or related issue which is the subject of a review on the current work programme?**

**Is this an issue currently being looked at by another form of local scrutiny, eg Suffolk County Council?**

**As with all scrutiny, does the matter referred have the potential for scrutiny to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring member's ward? Please provide details.**

**Is the CCfA currently the subject of legal action by any party (to your knowledge) or is being examined by a formal complaints' process?**

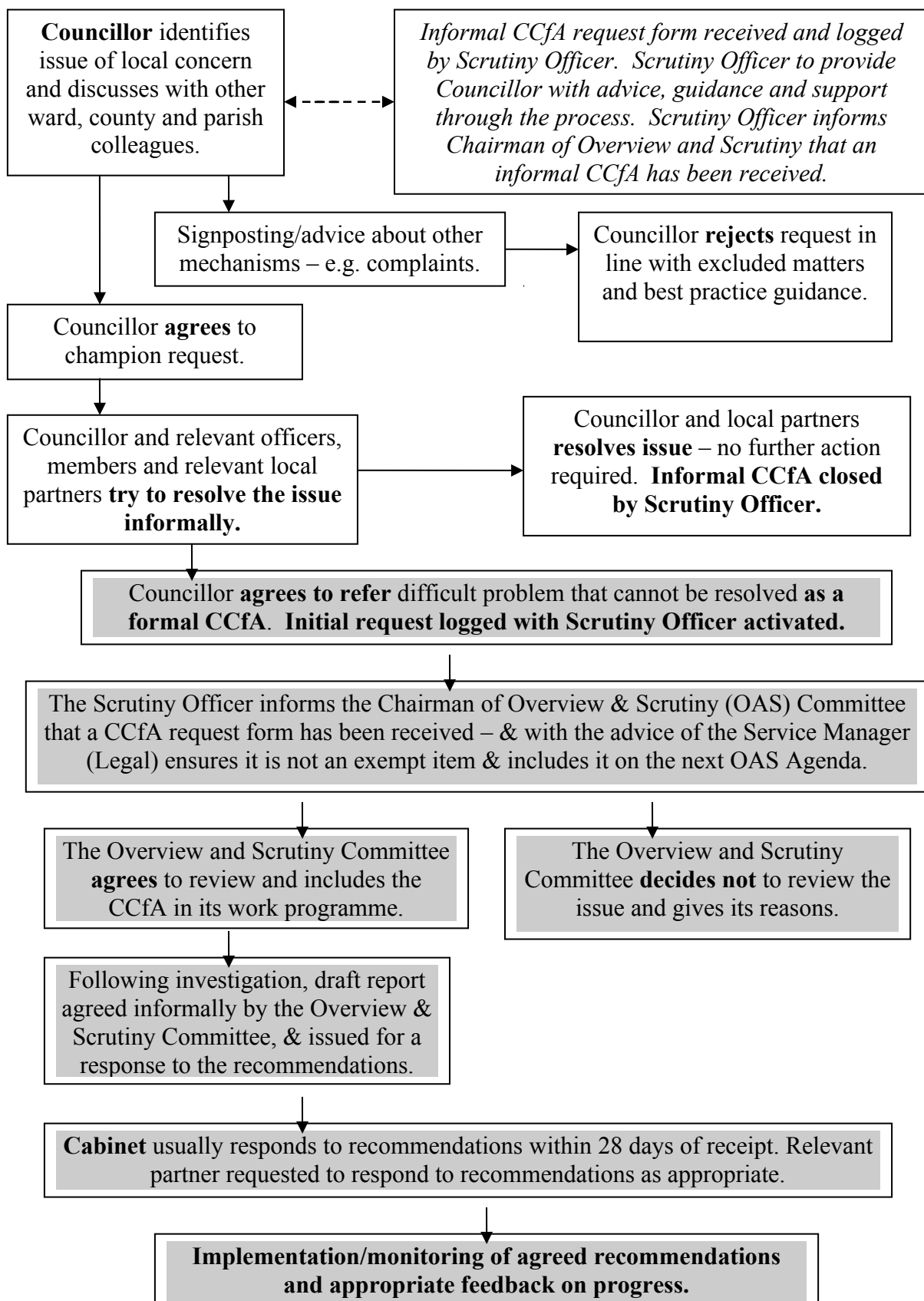
**Are there any deadlines associated with the CCfA of which the Overview and Scrutiny Committee needs to be aware:**

**Please complete and return the form to either:**

St Edmundsbury Borough Council  
Christine Brain (Scrutiny Officer)  
West Suffolk House  
Western Way  
Bury St Edmunds  
Suffolk  
IP33 3YU

Forest Heath District Council  
Christine Brain (Scrutiny Officer)  
District Offices  
College Heath Road  
Mildenhall  
Suffolk  
IP28 7EY

## Appendix 2 – Summary of CCfA Mechanism



## **Appendix 3 - Explanatory Notes**

### **1. Definition of a local government matter and a local crime and disorder matter**

#### Local government matter

For the purpose of the Act a local government matter, in relation to a member of a local authority is one which:

- relates to the discharge of any function of the authority;
- affects all or part of the electoral area for which the referring member is elected or any person who lives or works in the area (ie it must be specific to a particular locality); and
- is not an excluded matter.

#### Local crime and disorder matter

A local crime and disorder matter, in relation to a member of a local authority, has been defined to mean a matter concerning:

- (a) crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment); or
- (b) the misuse of drugs, alcohol and other substances that affects the electoral area represented by the member, or the people who live or work in that area.

### **2. Definitions of “vexatious” “persistent” “discriminatory” and “not reasonable”**

Statutory regulations deal with matters that can be excluded from CCfA, stating that “any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee is to be excluded”.

#### Vexatious/Persistent

Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easy to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.

Issues around persistency are implied by this definition. However, a persistent request may well be entirely valid – it may relate to a systematic problem that has not been effectively resolved. Similarly, a request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

CCfAs need to be looked at on their merits, rather than on the basis of who is bringing them, or whether somebody thinks there is an ulterior motive for them being brought.

Where a request for a CCfA is clearly vexatious, detailed reasons for coming to this decision will be given to the councillor concerned. There could, however, be instances where changes to the scope of the CCfA, or its focus, could make it more acceptable while still meeting the councillor’s requirements.

### Discriminatory

A modern interpretation of the word “discrimination” is provided at Section 45 of the Equality Act 2006, in relation to religion and belief, as follows:

*A person (A) discriminates against another (B) if on the grounds of the religion or belief of B or of any other person except A, A treats B less favourably than he treats others.* This definition can easily be amended to deal with other forms of discrimination, such as discrimination for reasons of sex and/or race. So a discriminatory CCfA might be one which implies or states that a group of people or an area receives better, or worse, services on account of that group’s predominant religion, race, sex or other characteristic, as covered by discrimination legislation.

### Not reasonable

It is suggested that, in the interests of transparency, authorities do not interpret “not reasonable” as being the same as the legal word “unreasonable”. It is best to consider it as a qualifier to the word “vexatious”, as a vexatious request is likely not to be reasonable and a request that is not reasonable is likely to be vexatious.

## **3. Structure of the CCfA hearing**

A CCfA hearing will be based on the Overview and Scrutiny Committees structure for dealing with call-in hearings.

The following protocol is intended to formalise the conduct of CCfA hearings and the preparation work carried out in the run-up to such a hearing. It should be noted that the protocol may be varied to meet the requirements of any particular circumstances.

### **Prior to the hearing**

1. Shortly after the Overview and Scrutiny Committee agrees to take forward a CCfA to a full hearing, a meeting will take place between the Chairman and Vice-Chairman of the Overview and Scrutiny Committee, relevant officers, Scrutiny Officer, Assistant Director (HR, Legal and Democratic Services), the Service Manager (Shared Legal) and the Member submitting the CCfA, at which a definitive list of witnesses for the CCfA hearing will be drawn up, together with question plans for each witness as appropriate.
2. The CCfA Request Form and any additional papers provided by the referring councillor will be published with the agenda for the meeting.
3. The referring councillor and relevant Portfolio Holder(s), officers and partners will be invited to the meeting.
4. Any other relevant external witnesses will be invited to the meeting.
5. Seven days’ notice of a request to attend the meeting will be given to all participants. If a question plan is to be produced, seven days’ notice of the questions planned will also be given to participants.
6. Prior to the meeting any member who may have a conflict of interest will be given relevant advice by the Monitoring Officer.



## **The hearing**

1. The CCfA hearing will normally be the first item of business on the agenda, in order that participants and other witnesses are not kept waiting.
2. Participants and witnesses will be placed around the table with the Committee if space permits, but if there is a large number of witnesses or other attendees at the meeting, they may be required to wait in a separate seating area or the public gallery.
3. The referring councillor will be invited to make a presentation outlining his or her reasons for referring the matter as a CCfA. A question and answer session will follow.
4. Any other parties relevant to the hearing, for example Portfolio Holders, officers or partners, will be invited to make presentations outlining their response to the CCfA. Question and answer sessions will follow.
5. Any other relevant external witnesses will be invited to make a presentation to the Committee without interruption, following which there will be a question and answer session. Any witness at a CCfA hearing who does not have a question plan, but is asked for his or her views on a particular issue, will be invited to speak for no more than three minutes.
6. Witnesses will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.
7. The referring councillor will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.



## **Forest Heath District Council Representation on Outside Bodies 2015 to 2019**

**and**

## **Representation on Wholly-Owned/Joint Venture Commercial Companies 2015 to 2019**

(Note: This list covers constituted organisations and charities. Council representation on project groups or boards, formed of various organisations, would be determined by Cabinet or in accordance with the Memoranda of Understanding for those projects. Further general information about the organisations and the representatives appointed to serve are available on the following link to the Council's website: [Outside Bodies](#))

### Outside Bodies

Aspal Close Working Group

Association for Suffolk Museums Management Committee

Brandon Heritage Centre

Brandon Remembrance Playing Fields Management Committee

'Breaking New Ground' Board (*replaces the Brecks Partnership – Core Management Group*)

District Councils' Network

East of England Local Government Association (EELGA)

Home of Horseracing Trust (Observer)

Internal Drainage Board – Burnt Fen

Internal Drainage Board – Lakenheath

Internal Drainage Board – Mildenhall

Local Government Association (LGA) (General Assembly)

Love Newmarket Business Improvement District (BID)

Mildenhall Community Association

Mildenhall Dome Joint Management Committee (*formerly Mildenhall Dome Leisure Centre Joint Co-ordinating Committee*)

Mildenhall Museum (Trustees)

National Horseracing Museum (Observer)

Newmarket Citizens Advice

Our Greenest County Board (Suffolk County Council)

Rural Services Network (SPARSE)

Suffolk County Council – Health and Wellbeing Board

Suffolk County Council – Suffolk Flood Risk Joint Scrutiny Sub-Committee

Suffolk County Council – Health Scrutiny Committee

Suffolk Joint Emergency Planning Policy Panel

Suffolk Police and Crime Panel

Suffolk Waste Partnership (SWP)

Suffolk West Citizens Advice

Western Suffolk Community Safety Partnership

### Wholly-owned/Joint Venture Commercial Companies

Barley Homes (Group) Ltd

Verse Facilities Management Ltd