



CHELtenham

BOROUGH COUNCIL

Notice of a meeting of Standards (Initial Assessment) Sub-Committee

Friday, 20 January 2012
Sherbourne Room, 2.00 pm

Membership	
Borough Councillor:	Les Godwin
Independent Members:	John Cripps and Jon Leamon

Agenda

1. ELECTION OF CHAIRMAN
2. APOLOGIES
3. DECLARATIONS OF INTEREST
4. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

The Committee is recommended to approve the following resolution:

“That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraphs 7C, Part 1, Schedule 12A (as amended) Local Government Act 1972, namely:

Paragraph 7C

Information presented to a Standards Committee, or to a sub-committee of a Standards Committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

5. REVIEW OF COMPLAINT UNDER THE CODE OF MEMBERS' CONDUCT
Report of the Borough Solicitor and Monitoring Officer

(Pages 1 - 38)

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Page 2

PART 5 - CODES AND PROTOCOLS

PART 5A – CODE OF MEMBERS' CONDUCT

Selflessness — members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity — members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity — members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability — members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness — members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement — members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others — members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law — members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them

Stewardship — members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership — members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Part 1: General Provisions

Introduction and interpretation

1. (1) This Code applies to **you** as a member of Cheltenham Borough Council.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code—

"meeting" means any meeting of—

Page 4

- (a) the authority (i.e Cheltenham Borough Council);
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;
- (d) informal meetings of the authority with other members and/or with officers, relating to the discharge of the authority functions.

"member" includes a co-opted member and an appointed member.

- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000

Scope

- 2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority—
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

- 3. (1) You must treat others with respect.
- (2) You must not—

Page 5

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be—
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,
in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (3) In particular, you shall not provide or offer to provide a reference for any candidate for appointment or promotion as an Officer of the authority.

4. You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

(As guidance for members, it is suggested that the reasonable requirements referred to in paragraph 4(a)(iv)(bb) will usually include the following requirement:-

- i) A Member should notify the Monitoring Officer, or their deputy, before disclosing confidential information under this provision.)

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority—

- (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must –
- a. do so on the basis of the merits of the circumstances and in the public interest,
 - b. have regard to any relevant advice provided to you by the authority's Officers – in particular by:—
 - (i) your authority's chief finance officer; or
 - (ii) your authority's monitoring officer,where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2: Interests

Personal interests

8. (1) You have a personal interest in any business of your authority where either—
- (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

- (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business—
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992
- (3) The determining of any approval, consent, licence, permission or regulation shall include the amendment and/or modification of any such approval, consent, licence, permission, or regulation or any condition limitation or term to which it is subject or the revoking of any approval, consent, licence, permission or regulation.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3: Registration of Members' Interests

Registration of members' interests

13. (1) Subject to paragraph 14, you must, within 28 days of—
- (a) this Code being adopted by or applied to your authority; or
 - (b) your election or appointment to office (where that is later),
- register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under

paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

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Page 12

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Page 16

OTHER ACTION GUIDANCE

contents

introduction	2
what is other action?	3
what might other action involve?	4
deciding on other action	5
when is other action appropriate	7
adjournment	8
role of the monitoring officer	10
consideration of the monitoring officer's report	11
what if other action does not work?	12
why other action closes the opportunity to investigate	13

introduction

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

what is other action?

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

what might other action involve?

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

deciding on other action

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

deciding on other action

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

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

when is other action appropriate?

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

adjournment

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

adjournment

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

role of the monitoring officer

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

consideration of the monitoring officer's report

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

what if other action does not work?

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

why other action closes the opportunity to investigate

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

why other action closes the opportunity to investigate

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

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Page 32

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Page 34

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Page 36

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Page 38