

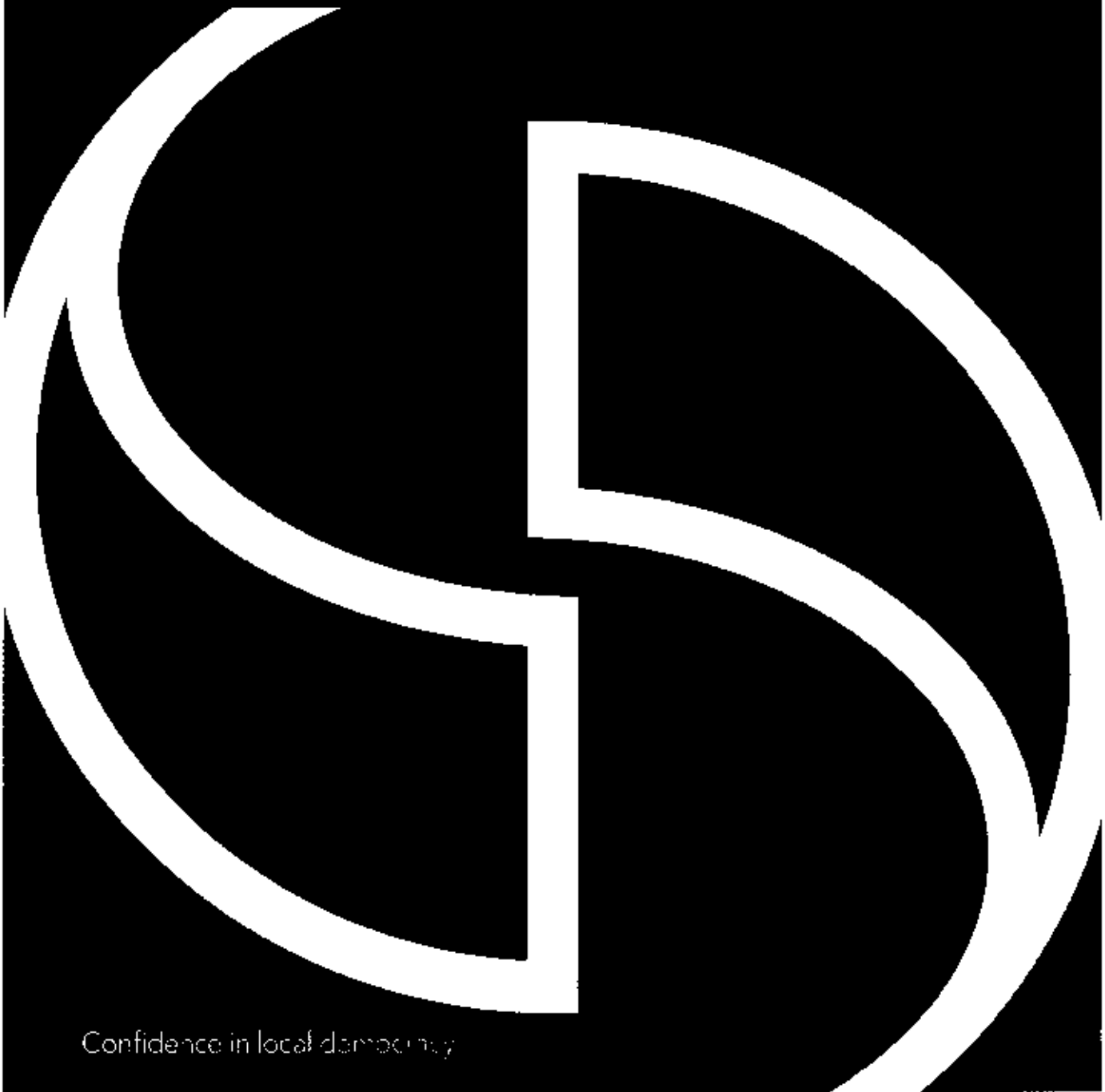
11/2017



the
Standards Board
for England

Standards Committee determinations

Guidance for monitoring officers
and Standards Committees



Confidence in local democracy

Standards Committee determinations

Guidance for monitoring officers and Standards Committees

This guide

This guide provides information on the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003* and includes practical procedural information for Standards Committees on how to hold a hearing. Under the regulations, Standards Committees must take this guidance into account.

It covers the main parts of the local determination process, including:

- referrals from an Ethical Standards Officer (ESO);
- the pre-hearing process;
- the Standards Committee hearing;
- notice of findings; and
- appeals to The Adjudication Panel for England.

This guide is for monitoring officers and Standards Committee members in:

- district, unitary, metropolitan, county and London borough councils;
- police authorities;
- fire authorities (including fire and civil defence authorities);
- passenger transport authorities;
- the Broads Authority;
- National Park authorities;
- the London Fire and Emergency Planning Authority;
- the Greater London Authority;
- the Common Council of the City of London; and
- the Council of the Isles of Scilly.

It also covers police authorities in Wales. However, the Commissioner for Local Administration in Wales handles allegations about members of Welsh police authorities. For this reason, references to the Ethical Standards Officer (ESO) within this guide should be read as the Commissioner for Local Administration in Wales, and references to The Adjudication Panel for England should be read as The Adjudication Panel for Wales.



Introduction

Under the *Local Authorities (Code of Conduct) (Local Determination) Regulations 2003*, Ethical Standards Officers (ESOs) can refer completed investigation reports to monitoring officers for Standards Committees to determine (decide) whether or not a member has failed to follow the Code of Conduct and, if so, what penalty should be applied, if any.

Standards Committees should be familiar with the regulations and have effective procedures in place to make sure that they can determine cases fairly and consistently.

The process for dealing with matters at a local level should be the same for all members, no matter what political party they represent or what level of local government they represent. Standards Committees of district and unitary authorities fulfil the same role in relation to parish and town councils in their area. In this case, Standards Committees can set up sub-committees to deal with town and parish council matters.

Standards Committees only have the power to determine whether or not a member has failed to follow the Code of Conduct following a referral from an ESO. If someone makes an allegation about a member's conduct direct to the authority, it should refer the matter to The Standards Board for England for consideration, provided the person making the allegation has not done so already. If The Standards Board for England does not refer an allegation to an ESO for investigation, the Standards Committee of the authority involved may still want to consider whether general lessons can be learnt from the allegation or incident.

A decision by The Standards Board for England not to refer a matter for investigation does not prevent the Monitoring Officer having an informal discussion with the member concerned about the incident that gave rise to the allegation and how similar incidents might be avoided in future.

Please note that the local determination regulations do not cover investigations at a local level. The Office of the Deputy Prime Minister plans to issue more regulations to provide a framework for ESOs to refer matters to monitoring officers for investigation.

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The local determination process

The main purpose of the Standards Committee's hearing is to decide whether or not a member has failed to follow the authority's Code of Conduct and, if so, to decide whether or not any penalty should be applied and what form any penalty should take.

This section provides practical procedural information for Standards Committees on how to prepare for and hold a hearing and tell the relevant people of the decision.

ESO referrals

The Standards Board for England carefully assesses all the allegations that it receives. It considers, among other things, the seriousness of the allegation and makes a judgement as to whether or not the allegation should be investigated. If The Standards Board for England believes an investigation is needed, it will pass the matter to an ESO.

ESOs work for The Standards Board for England but their responsibilities and powers are set out in the *Local Government Act 2000*. Neither The Standards Board for England nor the Government can interfere with an investigation by an ESO.

An ESO will investigate an allegation referred by The Standards Board for England to decide which of the following four findings is appropriate in the circumstances:

- 1 there is no evidence that the member has failed to follow any part of the Code of Conduct;
- 2 no action needs to be taken in relation to the matters investigated;
- 3 the matter should be referred to the Monitoring Officer of the relevant authority for local determination; or
- 4 the matter should be referred to The Adjudication Panel for England.

What will ESOs refer?

Matters that the ESO is likely to refer for local determination include:

- matters that are of an entirely local nature and do not affect broader national issues; and
- matters that do not appear to need the heavier penalties available to The Adjudication Panel for England.

However, ESOs will refer matters on a case-by-case basis as all the relevant circumstances will need to be considered. An ESO is unlikely to refer a case where it would be difficult or inappropriate to try to resolve it locally, for example, if there is an allegation that serious bullying and harassment has taken place in the authority.

When an ESO refers a matter to the Monitoring Officer of the relevant authority, the Monitoring Officer must arrange for the authority's Standards Committee to consider the ESO's report and determine the matter.

Under the local determination regulations, an ESO will only refer a matter to a Standards Committee after completing his or her investigation. Standards Committees should not re-open the investigation. However, the member who the allegation has been made about has the right to give relevant evidence to the Standards Committee and, if more evidence becomes available after the completion of the ESO's investigation, the Standards Committee may consider that evidence during the course of its hearing.

Timing of the Standards Committee hearing

The Standards Committee must hold a hearing in relation to an allegation within three months of the Monitoring Officer receiving the ESO's report.

When the Monitoring Officer receives a report, he or she must give a copy of that report to the member who the allegation has been made about.

Normally, hearings should take place at least 14 days after the member who the allegation has been made about receives a copy of the ESO's report from the Monitoring Officer. However, the hearing can be held less than 14 days after the member receives a copy of the ESO's report if the member agrees.

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If the member who the allegation has been made about does not go to the hearing, the Standards Committee may consider the ESO's report in the member's absence. If the Standards Committee is satisfied with the member's reason for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

If the Standards Committee does not hear the matter within three months of receiving the ESO's report, the committee will be failing in its legal duty and may face judicial review proceedings. The committee cannot refer the matter back to The Standards Board for England.

Scheduling a hearing

Except in complicated cases, Standards Committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, committees should bear in mind that late-night hearings are not ideal for effective decision-making.

The pre-hearing process

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any of the findings of fact in the ESO's report;
- decide whether or not those disagreements are significant to the hearing;
- decide whether or not to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearing that should be held in private; and
- decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

It is important for everyone involved to recognise that the pre-hearing process will only deal with procedural issues.

Format

The pre-hearing process should usually be carried out in writing, although occasionally a face-to-face meeting between the Chair, the people involved and their representatives may be necessary.

The member's response

The officer providing administrative support to the Standards Committee, in consultation with the Chair of the committee, should write to the member concerned to propose a date for the hearing, outline the hearing procedure and the member's rights. They should also ask for a written response from the member, within a set time, to find out whether or not he or she:

- disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;
- wants to be represented at the hearing by a solicitor, barrister or any other person;
- wants to give evidence to the Standards Committee, either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private;
- wants any part of the ESO's report or other relevant documents to be withheld from the public; and
- can come to the hearing.

We recommend that Standards Committees ask members to make clear all the disagreements with the findings of fact in the ESO's report during this pre-hearing process. This will allow the committee to decide what witnesses will be needed. Standards Committees should not allow members to raise new disagreements over findings of fact in the ESO's report at the hearing unless there are good reasons for doing so, such as new evidence becoming available.

There are model forms to help the member respond to the Standards Committee in Appendix 1. These include forms to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence for the Standards Committee (Form B).

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The ESO's response

The Standards Board for England recommends that the Standards Committee also invites the relevant ESO to comment on the member's response, within a set time, to say whether or not he or she:

- wants to be represented at the hearing;
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private; and
- wants any part of the ESO's report or other relevant documents to be withheld from the public.

Other witnesses

The Standards Committee may also arrange for any other witnesses to be present who it feels may help in determining the case, including the person who made the original allegation. However, the committee cannot order witnesses to appear or give evidence.

The pre-hearing process summary

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

- set the date, time and place for the hearing;
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;
- note whether the member concerned or the ESO will go to or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

There is a checklist for this pre-hearing process summary document in Appendix 1 (Form F).

The hearing

Standards Committees should work fairly and in a way that encourages the confidence of members and the public. The model hearing procedures (in Appendix 2) are intended to give Standards Committees a consistent approach to determining matters locally. The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

The Standards Committee

Under current law, a Standards Committee may not delegate (allocate responsibility for) determination of a case to a sub-committee. However, a case relating to a town or parish councillor can be delegated to a sub-committee which has been set up to deal with town and parish council matters. All members of the Standards Committee may take part in a hearing if they choose. However, we recommend that a small number of members (three or five) take part in the determination as it is fairer and more efficient to hold a hearing before a small group.

Proposed amendments in the Local Government Bill, which is currently before Parliament, will allow Standards Committees to formally delegate responsibility for local determinations to a sub-committee.

Currently, at least three members of the Standards Committee, including at least one who is an independent member of the committee, must be present at each meeting. If a case relates to a parish councillor, one of the committee members present must be a parish councillor.

If the proposed amendments in the Local Government Bill come into force, we recommend that the Standards Committee sets up a panel of three or five members to make determinations on cases of misconduct.

When it is determining a case, the Standards Committee should be recognised as truly fair and politically unbiased, so that members of the public and members of the authority have confidence in its procedures and findings.

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To encourage confidence and remove any perception of political interference, we recommend that one of the independent members of the Standards Committee chairs the hearing.

Representatives

The member who the allegation has been made about may choose to be represented by counsel or a solicitor, or any other person they wish. If the member concerned wants to have a non-legal representative, the member must tell the Standards Committee in advance. The Standards Committee should normally give permission for members to be represented by a person they choose, but may refuse permission if the representative is directly involved in the matter being determined.

The Standards Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Witnesses

Although the member who the allegation has been made about 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.

The Standards Committee also has the right to govern its own procedures as long as it acts fairly. For this reason, 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.

Evidence

The Standards Committee controls the procedure and evidence presented at a hearing, including the way witnesses are questioned.

The member who the allegation has been made about must be allowed to make representations, either verbally or in writing. If the member prefers, these representations can be made through his or her nominated

representative. The member who the allegation has been made about must also be given the opportunity to give evidence to the Standards Committee and call witnesses to give evidence.

In many cases, the Standards Committee may not need to consider any evidence other than the ESO's report. If more evidence is needed or if people do not agree with certain findings of fact in the ESO's report, the Standards Committee may need to hear from witnesses.

The Standards Committee can question witnesses directly. It can also allow witnesses to be questioned and cross-examined by the member who the allegation has been made about or the ESO or their representatives. The Standards Committee can ask that these questions be directed through the Chair.

The finding of the Standards Committee

Following its hearing, the Standards Committee can make one of the following findings:

- the member has not failed to follow the authority's Code of Conduct;
- the member has failed to follow the authority's Code of Conduct, but no action needs to be taken; or
- the member has failed to follow the authority's Code of Conduct and should be penalised.

Penalties

If the Standards Committee finds that a member has failed to follow the Code of Conduct and that he or she should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority;
- restrict the member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the member for up to three months; or
- suspend or partly suspend the member for up to three months on the

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condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the Standards Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee.

Suspension or partial suspension will normally start immediately after the Standards Committee has made its decision. However, if the Standards Committee chooses, the penalty may start at any time up to six months following its decision. This may be appropriate if the penalty would otherwise have little effect on the member, for example, in the case of a suspension or partial suspension, if there are no authority or committee meetings which the member would normally go to in the period following the conclusion of the hearing.

Periods of suspension or partial suspension set by a Standards Committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under Section 85 of the *Local Government Act 1972*.

Deciding a penalty

When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the member'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 member's intention? Did the member know that he or she was failing to follow the Code of Conduct?
- Did the member 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 member accept he or she was at fault?
- Did the member apologise to the relevant people?

- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same thing again?

So, for example, if a member has repeatedly or blatantly misused the authority's information technology resources, the Standards Committee may consider withdrawing those resources from the member.

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 an authority's premises or equipment should not unnecessarily restrict a member'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. To help Standards Committees, we will put appropriate summaries of Standards Committee decisions on our website at www.standardsboard.co.uk

Notice of the Standards Committee's findings

The Standards Committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the committee will normally also draft minutes of the meeting.

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As soon as is reasonably practical after the hearing, the Standards Committee must give its full written decision to the relevant people. We recommend that the Standards Committee give its full written decision to those people within two weeks. The relevant people include:

- the member who is the subject of the finding;
- the ESO concerned;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

Making the findings public

The Standards Committee must also arrange for a summary of the decision and reasons for that decision to be published in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities.

If the Standards Committee finds that a member did not fail to follow the authority's Code of Conduct, the public summary must say this, and give reasons for this finding. In these cases, the member involved is also entitled to ask that no summary of the decision should be passed to local newspapers.

If the Standards Committee finds that a member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the member failed to follow the Code, outline what happened and give reasons for the Standards Committee's decision not to take any action.

If the Standards Committee finds that a member failed to follow the Code and it sets a penalty, the public summary must say that the member failed to follow the Code of Conduct, outline what happened, explain what penalty has been set and give reasons for the decision made by the Standards Committee.

The Standards Committee's reports and minutes should be available for public inspection for six 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.

Full written decision format

For consistency and thoroughness, we recommend that the Standards Committee use the following format for its full written decision. A model format for the full written decision is available on our website at www.standardsboard.co.uk

The front cover of the Standards Committee's full written decision should include:

- the name of the authority;
- 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 for keeping his or her identity confidential);
- case reference numbers of the principal authority and The Standards Board for England;
- the name of the Standards Committee member who chaired the hearing;
- the names of the Standards Committee members who took part in 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 of the hearing; and
- the date of the report.

The Standards Committee's full written decision should include:

- a summary of the allegation;
- the relevant section or sections of the Code of Conduct;
- a summary of the evidence considered and representations made;
- the findings of fact, including the reasons for them;
- the finding as to whether or not the member failed to follow the Code of Conduct, including the reasons for that finding;
- the penalties applied, if any, including the reasons for any penalties; and
- the right to appeal.

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Public access to hearings and documents

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair.

Confidential information and 'exempt information'

The regulations state that a modified version of the rules about access to information contained in Part VA of the *Local Government Act 1972* should apply to Standards Committees making local determinations. This means that there is a clear presumption that hearings should be held in public. There are two circumstances in which hearings (or parts of hearings) can or should be held in private.

- 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.
- 2 The law also gives the Standards Committee the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the *Local Government Act 1972* (see Appendix 3). However, the regulations also provide for four other categories of 'exempt information'.
 - a Information relating to the personal circumstances of any person.
 - b Information which must be kept confidential, for example, under a contract.
 - c Information relating to national security.
 - d The deliberations of the Standards Committee when hearing matters referred by an ESO.

The rules about confidential information are different from the rules about 'exempt information'. Standards Committees must hold some parts of a

meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

Deciding to withhold 'exempt information'

Standards Committees should carefully consider any decision to withhold exempt information from the public. Although the legal position is not entirely clear, The Standards Board for England advises that Standards Committees should follow Article 6 of the *European Convention on Human Rights*, as there may be an obligation to do so under Section 6(1) of the *Human Rights Act 1998*. But, in any case, the Standards Committee has a duty to act fairly and in line with the rules of natural justice.

Please note that Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved. Article 6 is discussed in Appendix 4.

If a Standards Committee decides to exclude the public to prevent 'exempt information' being revealed, it should only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt information', the public will only have to be excluded while that witness is giving evidence.

If evidence is heard in private, people should be warned not to mention that evidence during the public parts of the hearing, or outside the hearing. The Standards Committee may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

Access to documents

The statutory rules about access to information which apply to Standards Committees do not simply relate to public attendance at hearings. They also establish the general principle that the agenda and reports to be discussed should be available for public inspection before and during a hearing. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, must be available for public inspection for a

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specific period of up to six years after that hearing has taken place. The ESO's report will be one of the reports before the Standards Committee.

The regulations also state that the agenda, reports and minutes of district and unitary authority Standards Committee meetings must be sent to any parish councils involved.

Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However, an officer appointed by the authority has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private. The Standards Board for England recommends that this power should be exercised where one of the people involved has requested that a document be kept confidential.

After a hearing, sections of the committee's reports which relate to parts of the hearing held in private will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.

When considering whether to exclude the public from a hearing, the Standards Committee will also need to say which parts of the reports before the committee are not to be made available for public inspection.

Appeals to The Adjudication Panel for England

The member who is the subject of a Standards Committee finding may apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding. Please see page 48 for contact details.

The President must receive the member's written application within 21 days of the member receiving notice of the Standards Committee's decision. In this application, the member 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.

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 in part.

The President will give the member concerned his or her written decision within 21 days of receiving the application. The President will also give his or her written decision to:

- the ESO concerned;
- the Standards Committee that made the original finding;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

If the President refuses to give permission, he or she will explain the reasons for that decision.

Appeal tribunals

If permission is granted, the President of The Adjudication Panel for England will arrange for a tribunal to deal with the member's appeal. The tribunal will be made up of at least three members appointed by the President and may include the President.

Any member of The Adjudication Panel for England with an interest in the matter may not be a member of the appeal tribunal. Likewise, any member of The Adjudication Panel for England who has been a member or officer of the authority concerned within the last five years cannot take part.

If the member does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing. The tribunal must give the member at least 21 days' notice of the date of the hearing.

The member can be represented at the appeal hearing by counsel, a solicitor or any other person they choose. If the member wants to have a non-legal representative, the member must get permission from the tribunal beforehand, who may prevent that person acting as a representative if he or she is directly involved in the case.

The appeal tribunal can decide its own procedures. It is likely, however, that both the ESO and the Standards Committee 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.

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If the member agrees to have the appeal carried out in writing, the tribunal may still decide to hold a hearing at which the member can attend in person and be represented as outlined above. However, the tribunal may choose to carry out the appeal entirely through written representations.

If, after being given reasonable notice, the member fails to go to or be represented at an appeal hearing, the tribunal may determine the matter in the member's absence. However, if the tribunal is satisfied that there is a good reason for the member's absence, it should postpone the hearing to another date.

Outcome of the appeal

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 Standards Committee's finding, or part of the finding, it may:

- approve the penalty set by the Standards Committee;
- require the Standards Committee to set a penalty if it has not already done so; or
- require the Standards Committee to set a different penalty to that already set.

If the tribunal dismisses the finding of the Standards Committee, the decision and any resulting penalty will no longer apply. The Standards Committee must act on any directions given by the appeal tribunal.

Notice of the appeal tribunal's decision

The appeal tribunal will give written notice of its decision to:

- the member who is the subject of the decision;
- the ESO concerned;
- the Standards Committee that made the original finding;
- the Standards Committees of any other authorities concerned;
- any parish councils concerned; and
- any person who made the allegation.

The tribunal will also publish a summary of its decision in one or more of the newspapers circulating in the area of the authorities concerned.

Costs

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

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

The role of the Monitoring Officer

Monitoring officers need to be aware of the potential conflicts involved in advising the Standards Committee and advising members.

Advising the Standards Committee

It is important that Standards Committees receive high quality, independent advice. For this reason, we recommend that a Monitoring Officer should be the main advisor to the Standards Committee, unless they have an interest in the matter that would prevent them from performing this role independently. If this situation arises, a Monitoring Officer should arrange for another appropriately qualified officer to advise the Standards Committee.

In advising the Standards Committee, the Monitoring Officer or other legal advisor's role is to:

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

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Advising members

Monitoring officers play an important role in advising their members on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the Standards Committee at a later stage. However, conflicts of interest are not likely to arise simply from informal discussions between members and monitoring officers.

We recommend that monitoring officers consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise members; or
- continuing to advise members, identifying possible scenarios that may lead to future conflicts, and reassuring themselves that if their advice could be material to an investigation, they have another appropriately experienced officer who is prepared to support the Standards Committee in its hearings and deliberations.

Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the Standards Committee.

For more information

For more information about this guide or about The Standards Board for England more generally, please contact us on 0845 078 8181 or e-mail enquiries@standardsboard.co.uk. Or, please visit our website at www.standardsboard.co.uk

APPENDIX 1

Model documentation for the pre-hearing process

Authorities should use a pre-hearing process to:

- identify whether the member who the allegation has been made about disagrees with any findings of fact in the ESO's report;
- decide whether those disagreements are significant to the hearing;
- decide whether to hear evidence about those disagreements during the hearing;
- decide whether or not there are any parts of the hearings that should be held in private; and
- decide whether or not any parts of the ESO's report or other documents should be withheld from the public.

Below is a checklist for authorities to use before the hearing. At the end of Appendix 1 is model documentation to support it. The documentation is intended to give authorities a consistent approach to help them decide what the relevant issues are before the hearing itself. It is not compulsory.

Pre-hearing process checklist for authorities

The Monitoring Officer must give a copy of the ESO's referred report to the member who the allegation has been made about.

The officer providing administrative support to the committee, in consultation with the Chair of the committee, should:

- provide a copy of the Standards Committee's pre-hearing and hearing procedures to the member who the allegation has been made about;
- outline the member's rights and responsibilities;
- propose a date for the hearing;
- ask for a written response from the member by a set time to find out whether he or she:
 - disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements;

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- wants to be represented at the hearing by a solicitor, barrister or any other person, noting that the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined;
 - wants to give evidence to the Standards Committee, either verbally or in writing;
 - wants to call relevant witnesses to give evidence to the Standards Committee;
 - can come to the hearing on the proposed date;
 - wants any part of the hearing to be held in private; and
 - wants any part of the ESO's report or other relevant documents to be withheld from the public;
- send a copy of the member's response to the ESO and invite the ESO to say by a set time whether he or she:
 - wants to be represented at the hearing;
 - wants to call relevant witnesses to give evidence to the Standards Committee;
 - wants any part of the hearing to be held in private;
 - wants any part of the ESO's report or other relevant documents to be withheld from the public; and
 - wants to invite any other witnesses the committee feels are appropriate.

The Chair of the committee, in consultation with the legal advisor to the committee, should then:

- confirm a date, time and place for the hearing;
- confirm the main facts of the case that are agreed;
- confirm the main facts which are not agreed;
- confirm which witnesses will give evidence;
- outline the proposed procedure for the hearing; and
- provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing.

Checklist for members

The officer providing administrative support to the committee, in consultation with the Chair of the committee, should make sure that the member who the allegation has been made about is aware of the following points.

Pre-hearing process

The member concerned has the right to:

- go to the hearing and present his or her case;
- call a reasonable number of witnesses to give relevant evidence to the Standards Committee; and
- be represented at the hearing by a solicitor, barrister or any other person, noting that the committee will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined.

Any disagreements with the findings of fact in the ESO's report must be raised during the pre-hearing process. The Standards Committee will not consider any new disagreements about the report's findings of fact at the hearing itself, unless there are good reasons why these have not been raised beforehand.

The member does not have to go to the hearing or be represented. If the member chooses not to go to the hearing, the committee may make a determination in his or her absence.

The hearing will be held in public and the relevant papers will be available for public inspection unless the Standards Committee is persuaded that there is good reason to exclude the public, in line with the relevant access to information and human rights legislation.

Hearing process

After considering the written and verbal presentations, the Standards Committee will reach and announce its findings of fact, whether or not the member has failed to follow the Code of Conduct and whether or not

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a penalty should be set. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the Standards Committee will give the member concerned its full written decision within two weeks of the end of the hearing.

If the Standards Committee decides that the member has failed to follow the Code of Conduct and that the member should be penalised, it may do any one or a combination of the following:

- censure the member. This is the only form of penalty available when dealing with a person who is no longer a member of the authority;
- restrict the member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the member for up to three months; or
- suspend or partly suspend the member for up to three months on the condition that the suspension or partial suspension will end if the member apologises in writing, receives any training, or takes part in any conciliation that the Standards Committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Standards Committee.

Penalties may start immediately or up to six months after the hearing, if the Standards Committee wishes.

The Standards Committee will also arrange to publish a summary of its findings, reasons for its findings and any penalty set in one or more newspapers that are independent of the authorities concerned and circulating in the area of those authorities. If the Standards Committee finds that the member has not broken the Code, the member can ask the Standards Committee not to have this information published.

The member who is the subject of a Standards Committee finding has the right to apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding.

Pre-hearing process forms

These forms are a guide only. Authorities should prepare their own forms as appropriate.

Form A provides an example table to help the member identify any disagreements about the findings of fact in the ESO's report.

Form B helps the member set out any other evidence that is relevant to the allegation.

Form C helps the member set out any representations the Standards Committee should take account of if the member is found to have broken the Code of Conduct.

Forms D and E cover details of the hearing and the witnesses who will give evidence.

Form F is a checklist of what should be included in the pre-hearing process summary.

FORM A

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

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

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

Please attach separate sheets if necessary.

FORM B

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

Other evidence relevant to the allegation

Paragraph number Details of the evidence

1

2

3

4

5

Please attach separate sheets if necessary.

FORM C

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

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.

Paragraph number

Factors for the Standards Committee to take into account when deciding whether or not to order any censure, restriction of resources or allowances, suspension or partial suspension

1

2

3

4

5

Please attach separate sheets if necessary.

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FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes.

1 The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing?

YES Reason:

NO

If 'No', please explain why.

2 Are you going to present your own case?

YES

NO

3 If you are not presenting your own case, will a representative present it for you?

YES Name:

NO

If 'Yes', please state the name of your representative.

4 Is your representative a practising solicitor or barrister?

YES Qualifications:

NO

If 'Yes', please give his or her legal qualifications. Then go to question 6.

If 'No', please go to question 5.

5 Does your representative have any connection with the case?

YES Details:

NO

If 'Yes', please give details.

6 Are you going to call any witnesses? **YES**

If 'Yes', please fill in Form E. **NO**

7 Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)? **YES** **Details:**

If 'Yes', please give details. **NO**

8 Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)? **YES** **Details:**

If 'Yes', please give details. **NO**

9 Do you want any part of the hearing to be held in private? **YES** **Reasons:**

If 'Yes', please give reasons. **NO**

10 Do you want any part of the relevant documents to be withheld from public inspection? **YES** **Reasons:**

If 'Yes', please give reasons. **NO**

Please attach separate sheets if necessary.

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FORM E

Details of proposed witnesses to be called

Name of witness or witnesses

1

2

3

WITNESS 1

a Will the witness give evidence about the allegation?

YES

Outline of evidence:

If 'Yes', please provide an outline of the evidence the witness will give.

NO

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?

YES

Outline of evidence:

If 'Yes', please provide an outline of the evidence the witness will give.

NO

WITNESS 2

a Will the witness give evidence about the allegation? **YES** **Outline of evidence:**

If 'Yes', please provide an outline of the evidence the witness will give. **NO**

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? **YES** **Outline of evidence:**

If 'Yes', please provide an outline of the evidence the witness will give. **NO**

WITNESS 3

a Will the witness give evidence about the allegation? **YES** **Outline of evidence:**

If 'Yes', please provide an outline of the evidence the witness will give. **NO**

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? **YES** **Outline of evidence:**

If 'Yes', please provide an outline of the evidence the witness will give. **NO**

Please attach separate sheets if necessary.

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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 authority;
- 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 principal authority 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
- an outline of the proposed procedure for the hearing.

APPENDIX 2

Model hearing procedures for the Standards Committee

The Standards Committee needs to have an efficient and effective hearing process. This will help the committee to deal with all the issues that need to be resolved in a way that is fair to the member. It will also reduce the prospects of any successful appeal.

These model procedures are intended to give Standards Committees a consistent approach to determining matters locally. They are based on a model developed by Peter Keith-Lucas of Wragge and Co Solicitors.

The model procedures are not compulsory. However, authorities should make sure that any procedures they use are consistent with the principles in this guidance.

Interpretation

- 1 'Member' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
- 2 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.
- 3 'Committee' also refers to 'a standards sub-committee'.
- 4 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

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Representation

- 5 The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

- 6 The committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the member and the investigator if they are present.

Setting the scene

- 7 After all the members and everyone involved have been formally introduced, the Chair should explain how the committee is going to run the hearing.

Preliminary procedural issues

- 8 The committee should 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

- 9 After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
- 10 If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
- 11 If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.

- 12 The member should 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.
- 13 At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
- 14 If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
- 15 If the member disagrees with any relevant fact in the investigator'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 investigator 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 member's explanation for not raising the issue at an earlier stage, the committee may then:
 - a continue with the hearing, relying on the information in the investigator's report;
 - b allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
 - c postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
- 16 The committee will usually move to another room to consider the representations and evidence in private.
- 17 On their return, the Chair will announce the committee's findings of fact.

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Did the member fail to follow the Code?

- 18 The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.
- 19 The member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.
- 20 The committee should then consider any verbal or written representations from the investigator.
- 21 The committee may, at any time, question anyone involved on any point they raise in their representations.
- 22 The member should be invited to make any final relevant points.
- 23 The committee will then move to another room to consider the representations.
- 24 On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

If the member has not failed to follow the Code of Conduct

- 25 If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

If the member has failed to follow the Code

- 26 If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:
 - a whether or not the committee should set a penalty; and
 - b what form any penalty should take.

- 27 The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 28 The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.
- 29 On their return, the Chair will announce the committee's decision.

Recommendations to the authority

- 30 After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

- 31 The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

APPENDIX 3

Categories of exempt information under Schedule 12A of the Local Government Act 1972 (as modified in relation to local determinations by standards committees)

- 1 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
- 2 Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:
 - a a magistrates' court committee;
 - b a probation committee within the meaning of the *Probation Service Act 1993*; or
 - c a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 2A Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the *Criminal Justice and Court Services Act 2000*.
- 3 Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
- 4 Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
- 5 Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
- 6 Information relating to the adoption, care, fostering or education of any particular child.

- 7 Information relating to the financial or business affairs of any particular person (other than the authority).
- 8 The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
- 9 Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
- 10 The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.
- 11 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
- 12 Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:
 - a any legal proceedings by or against the authority; or
 - b the determination of any matter, affecting the authority.(whether in either case, proceedings have been commenced or are in contemplation).
- 13 Information which, if disclosed to the public, would reveal 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.
- 14 Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

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- 15 The identity of a protected informant.
- 16 Information relating to the personal circumstances of any person.
- 17 Information which is subject to any obligation of confidentiality.
- 18 Information which relates in any way to matters concerning national security.
- 19 The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part III of the *Local Government Act 2000* in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the *Local Government Act 2000*.

Source: Appendix 3 is an extract from the *Local Government Act 1972* (as modified in relation to local determination by Standards Committees).

Please note that Plain English Campaign's Crystal Mark does not apply to Appendix 3.

APPENDIX 4

Excluding the public from hearings

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

- 1 At the hearing, the committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the *Local Government Act 1972* (as modified in relation to local determinations by Standards Committees). If the committee considers that 'confidential information' is likely to be revealed during the hearing, the committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
- 2 The committee also has the power to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are listed in Appendix 3. The committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The committee also has a duty to act fairly and in line with the rules of natural justice.
- 3 Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:
 - a morals;
 - b public order;
 - c justice;
 - d national security in a democratic society; or
 - e protecting young people under 18 and the private lives of anyone involved.

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- 4 There should be a public hearing unless the committee decides that there is good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
- 5 The committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and...necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.
- 6 Conflicting rights often have to be balanced against each other. The committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the committee) may interfere with this right unless it is:
 - a in line with the law; and
 - b necessary in a democratic society in the interests of:
 - i national security;
 - ii public safety;
 - iii the economic wellbeing of the country;
 - iv preventing crime or disorder;
 - v protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - vi protecting people's rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

- 7 In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary in a democratic society'. A measure will only be 'necessary' if it meets 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
- 8 The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. We do not consider that this will conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

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