

# Southend-on-Sea Borough Council

Agenda  
Item No.

**10**

Report of Chief Executive and Town Clerk  
to

## Standards Committee

on

3 December 2003

Report prepared by: John Williams

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### Local Determination of Complaints by the Standards Committee

*A Part I Public Agenda Item*

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#### 1. Purpose of Report

- 1.1 This report summarises the key points of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 and sets out an adjudication procedure for the Standards Committee to hear allegations of misconduct referred to it by the Standards Board for England.

#### 2. Recommendations

- 2.1 That the Council be recommended to adopt the Guidance in respect of Standards Committee Determinations set out in the Annex to this report including:

- The model forms at Appendix 1; and
- The Hearing Procedure Rules for determining complaints referred by the Standards Board for England at Appendix 2.

- 2.2 That the Council be recommended to add the Hearing Procedure Rules at Appendix 2, together with the remainder of the Annex to this report, as a new Part 4(i) of the Constitution.

- 2.3 That the Council be recommended to delete the existing paragraph (n) of the role and functions of the Standards Committee in Article 9.03 in Part 2 of the Constitution and that new paragraphs (n) and (o) be inserted:-

“(n) To hear and determine complaints against Members of the Council (and co-optees) and Members of Leigh-on-Sea Town Council referred by the Standards Board for England relating to an alleged breach of the Members Code of Conduct, provided that in dealing with such complaints:-

- the Committee must follow the Hearing Procedure Rules and Guidance in Part 4(i) of the Constitution; and
- the Committee may appoint a Sub-Committee to hold a hearing to be chaired by an independent member.

(o) To hear and determine complaints against Members of the Council and co-optees relating to an alleged breach of the Informal Planning Code in Part 5(c) or the Protocol on Member/Officer Relations in Part 5(e) provided that in dealing with such complaints the Committee should as far as possible follow the Hearing Procedure Rules and Guidance in Part 4(i) of the Constitution.”

### 3. Background

3.1 The Government has now made the first part of the "Section 66 Regulations" which will enable the Ethical Standards Officers (ESO) of the Standards Board for England (SBE) to refer allegations to the Standards Committee, or a Sub-Committee of the Standards Committee for local determination, once the ESO has completed an investigation of, and made a report on the allegation. These regulations, known as the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 ("**the Regulations**") came into force on 30<sup>th</sup> June 2003.

A further set of regulations is anticipated now that the Local Government Act 2003 has been passed, which will enable an allegation to be referred to the Monitoring Officer *before* investigation of the allegation by the SBE, so that the Monitoring Officer will then investigate the allegation and report to the Standards Committee, or Sub-Committee.

Incidentally, Section 112 of the Local Government Act 2003, which came into force on 18 November 2003, now gives the Standards Committee the power to appoint one or more sub-Committees to deal with Hearings.

#### The Content of the Regulations

3.2 The Regulations contain no great surprises in terms of the procedure which authorities will be required to follow in dealing with allegations of failure to comply with the Code of Conduct. Key features include:

- (a) Extension of the definition of "exempt information" to make it clear that the Standards Committee can meet in private session to determine allegations. In practice, to ensure public confidence in the process, the Committee should meet in public unless there are over-riding reasons for going into private session, such as the need to protect the privacy of individuals. However, these amendments will allow the Chief Executive and Town Clerk to deny press and public access to the Committee papers in advance of the meeting, and enable the Committee to retire in order to consider its findings.
- (b) Extension of the permitted grounds of disclosure of information obtained during an investigation or hearing, in order to enable a national Appeals Tribunal to discharge its functions.
- (c) The function of the Monitoring Officer is simply to report the ESO's report to the Standards Committee, without additional investigation. However, the Committee may wish to ask the Monitoring Officer to provide additional evidence if they are unable to come to a decision on the basis of the ESO's report and the Member's response.
- (d) There is no provision for the Standards Committee to call the ESO to give evidence in support of his/her report. The Committee may wish to ask the Standards Board for the ESO to make such an appearance if there are substantial disputes of fact in a particular case, but there is no automatic right for the Committee to require such attendance.
- (e) The Committee's hearing must be at least 14 days after the Monitoring Officer has been given a copy of the ESO's report on the Member concerned, but no later than 3 months after the Monitoring Officer first received the report from the ESO.
- (f) The Standards Committee is given a power to make a determination in the absence of the Member concerned where it is not satisfied with the Member's explanation for his/her absence.
- (g) Where the Member concerned has ceased to be a member by the date of the Committee's hearing, the only sanction which the Committee can impose is one of censure as to his/her conduct.

- (h) Where the Member is still a member at the date of the hearing, the range of sanctions is more varied and includes all or any of the following:
- (i) censure of the Member;
  - (ii) Restriction of the Member's access to Council premises and use of Council resources for up to three months, provided that this does not unduly restrict the Member's ability to perform his/her functions as a Member. It might be appropriate to bar a Member from the Council offices if the misconduct was the bullying of officers for example, or take away their Council-provided computer where the misconduct was inappropriate use of this facility;
  - (iii) Suspension as a member of the authority for up to three months. (This period does not count towards any disqualification by reason of failure to attend a meeting of the authority for six months);
  - (iv) Partial suspension as a member of the authority for up to three months. This could be suspension from Development Control Committee for example, if the misconduct particularly related to his/her participation in Development Control Committee; or
  - (v) Suspension or partial suspension for up to three months or until the Member provides a written apology or undertakes remedial training or conciliation as determined by the Standards Committee. Any such sanction shall take effect immediately upon the Committee's decision, unless the Committee determines that it shall take effect from a set date within six months of the date of the determination.

3.3 A Member can apply to the President of the National Adjudication Panel to be allowed to appeal against a determination of the Standards Committee. The Member will have to send in a written notice and the president will decide on the basis of whether the facts as set out in that notice indicate any reasonable prospect of the appeal succeeding. Any appeal will be heard by a tribunal comprising at least three members of the Adjudication Panel and may be by way of written representations if the Member consents.

#### Procedure for dealing with Referred Allegations

3.4 Ethical Standards Officers will now start to refer allegations to Monitoring Officers and Standards Committees where they consider that the alleged misconduct is of such a nature that, if proven, would merit a sanction within the powers set out above, rather than the more draconian sanctions available to a national Case Tribunal, of suspension for up to one year or disqualification from any local authority for up to 5 years.

3.5 The Council therefore needs to establish a procedure to deal with any such referred cases, to ensure they can be dealt with fairly and consistently.

The Standards Board for England has now issued Guidance on such procedures and this is summarised in the **Annex** to this report.

It is suggested that the Committee recommends the Council to adopt the Guidance set out in the **Annex** to this report, including the model forms at **Appendix 1** and the Hearing Procedure Rules at **Appendix 2**.

It is also suggested that the Role and Function of the Standards Committee in Article 9.03 of Part 2 of the Constitution be amended to reflect this new role and the Hearing Procedure Rules at **Appendix 2**, together with the remainder of the **Annex** to this report, be added as a new Part 4(i) of the Constitution.

Hopefully the Hearing Procedure Rules can also be used when the further regulations are made, whereby the investigation would be carried out by the Monitoring Officer. However it may be that some amendments will be needed.

The terms of reference of the Standards Committee also provide that the Committee can deal with allegations that a Member has breached the Informal Planning Code in Part 5c or the Protocol on Member/Officer relations in Part 5e of the Constitution, such matters falling outside the jurisdiction of the Standards Board for England. The Hearing Procedure Rules in **Appendix 2** should also be used for such hearings and recommendation. 2.3 deals with this.

**4. Background Papers**

4.1 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.

**5. Annex and Appendices**

5.1 **Annex** – Guidance in respect of Standards Committee Determinations

**Appendix 1** – Model Forms

**Appendix 2** – Hearing Procedure Rules

## Southend-on-Sea Borough Council

### Guidance in respect of Standards Committee Determinations including Hearing Procedure Rules

#### Introduction

1. This guidance, based on that issued by the Standards Board for England (SBE), covers the main parts of the local determination process in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (“**the Regulations**”).
2. Under the Regulations, the Standards Committee must take account of this guidance. The procedure will allow the Committee to determine whether or not a Member has failed to follow the Code of Conduct and if so, what penalty (if any) should be applied. The process for dealing with matters at local level in this way will apply to all Members, no matter what political party they represent or their status.
3. The Standards Committee only has the power to determine whether or not a Member has failed to follow the Code of Conduct, following a referral to the Committee by an ESO. If someone makes a complaint about a Member’s conduct direct to the Council, the matter must be referred to the Standards Board for England (SBE) for consideration. If the SBE does not refer an allegation to the ESO for investigation, the Standards Committee may still want to consider whether general lessons can be learnt from the allegation or incident. A decision by the SBE not to refer the matter for investigation does not prevent the Monitoring Officer from having an informal discussion with the Member concerned about the incident and how similar incidents might be avoided in the future.

At the moment, the Regulations do not cover *investigations* at local level. The Office of the Deputy Prime Minister will issue more regulations in due course to provide a framework under which ESOs can refer matters to Monitoring Officers for investigation.

#### Referrals from an Ethical Standards Officer

4. Matters which are likely to be referred by the ESO to the Standards Committee 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. Matters will be referred 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 resolve it locally, for example, if there is an allegation that serious bullying and harassment has taken place. Under the Regulations, an ESO will only refer a matter to the Standards Committee after completing his or her investigation. **The Standards Committee should not re-open the investigation.** However, the Member who is the subject of the allegation 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 Committee may consider that evidence during the course of its hearing.

#### Timing of Standards Committee Hearing

5. The Standards Committee must hold a hearing within three months of receipt of the ESO’s report, otherwise it will be failing in its legal duty and may face judicial review proceedings.
6. The Member who is the subject of the allegation must receive a copy of the ESO’s report.
7. Normally, hearings will take place at least 14 days after the Member who is the subject of the allegation has received the ESO’s report. However, the hearing can be held less than 14 days after this, if the Member agrees.
8. If the Member who is the subject of the allegation does not attend the hearing, the Standards Committee may consider the ESO’s report in the Member’s absence. If, however, the Committee is satisfied with the Member’s reason for not being able to attend the hearing on the date arranged, it can arrange for it to be held on another date.

9. Except in complicated cases, the Standards Committee will aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.
10. The Standards Committee cannot refer the matter back to the SBE.

### **The Pre-Hearing Process**

11. A pre-hearing process will be used to deal only with procedural issues, to:
  - Identify whether the Member who is the subject of the allegation disagrees with any of the findings of fact in the ESO's report
  - Decide whether or not these 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
  - Decide whether or not any parts of the ESO's report or other documents should be withheld from the public.
12. The pre-hearing process will usually be carried out in writing although on some occasions, a face-to-face meeting between the Chairman, the people involved and their representative may be necessary.
13. The Monitoring Officer (or a nominee), in consultation with the Chairman, will write to the Member concerned proposing a date for the hearing, outlining the hearing procedure and the Member's rights. The Member will be asked for a written response within a set time, to determine whether they:
  - Disagree with any of the findings of fact in the ESO's report, including the reasons for any disagreements. All disagreements with the findings of fact should be made clear at this stage of the process.
  - Want to be represented at the hearing by a solicitor, barrister or any other person
  - Want to give evidence to the Committee, either verbally or in writing
  - Want to call relevant witnesses to give evidence to the Committee
  - Want any part of the hearing to be held in private
  - Want any part of the ESO's report or other relevant documents to be withheld from the public
  - Can attend the hearing
14. Model forms have been designed to help the Member respond to the Standards Committee, which are set out in **Appendix 1**. They include a form to identify any findings of fact disagreed with (Form A) and also a form to outline any further evidence for the Standards Committee (Form B).
15. The ESO will be invited to comment on the Member's response within a set time limit, and to say whether they:
  - Want to be represented at the hearing
  - Want to call relevant witnesses to give evidence to the Standards Committee
  - Want any part of the hearing to be held in private
  - Want any part of their report or other relevant documents to be withheld from the Public
16. The Standards Committee will 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 to give evidence.

17. When the Standards Committee has received a response from the Member concerned and the ESO, the Chairman of the Standards Committee, in consultation with the Monitoring Officer (or a nominee), will then write to everyone involved at least two weeks before the hearing to:
- Set the time and date for the hearing
  - Summarise the allegation
  - Outline the main facts of the case that are agreed
  - Outline the main facts that are not agreed
  - Note whether the member concerned or the ESO will be present at or be represented at the hearing
  - List those witnesses, if any, who will be asked to give evidence
  - Outline the proposed procedure for the hearing.

### **The Standards Committee Hearing**

18. The procedure for hearings is set out in **Appendix 2**.

### **Composition of Standards Committee**

19. By virtue of Section 112 of the Local Government Act 2003, a Standards Committee can delegate the determination of a case to a Sub-Committee.
20. Sub-Committees must comprise at least 1 independent member and an independent member should chair the Sub-Committee in order to encourage confidence and remove any perception of political interference.

### **Representation**

21. The Member who is the subject of the allegation may choose to be represented by counsel or a solicitor, or any other person they wish. If they wish to have a non-legal representative, the Member must notify the Standards Committee in advance (by way of completing the forms in **Appendix 1**). The Standards Committee will normally give permission for a Member to be represented by anyone they choose, but may refuse permission if the representative is directly involved in the matter being determined. The Committee may also withdraw its permission if that representative disrupts the hearing.

### **Witnesses**

22. Although the Member who is the subject of the allegation is entitled to call any witnesses they want, the Standards Committee may limit the number of witnesses if it believes the number called to be unreasonable. The Committee also has the right to govern its own procedures as long as it acts fairly. For this reason, the 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 which will assist the Committee to reach its decision.

### **Evidence**

23. The Standards Committee will control the procedure and evidence presented at a hearing, including the way the witnesses are questioned.
24. The Member who is the subject of the allegation will be allowed to make representations either verbally or in writing. If the Member prefers, these representations can be made through their nominated representative. The Member must also be given the opportunity to give evidence to the Standards Committee and call witnesses to give evidence.
25. The Standards Committee can question witnesses directly and can also allow witnesses to be questioned and cross-examined by the Member who is the subject of the allegation, or the ESO, or their representatives.

## Findings of Standards Committee

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

- (a) the Member has not failed to follow the Code of Conduct
- (b) the Member has failed to follow the Code of Conduct, but no action needs to be taken
- (c) the Member has failed to follow the Code of Conduct and should be penalised.

## Penalties

27. If the finding of the Standards Committee is 26(c) above, it may do any one, or a combination of, the following:

- censure the Member. This is the only form of penalty available when the person in question is no longer a Member of the Council;
- restrict the Member's access to the Council's resources for up to three months, which could include limiting their access to the premises;
- suspend or partly suspend the Member for up to three months;
- 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 the Standards Committee orders them to. Conciliation would involve an independent person helping the relevant people to try to reach an agreement on the matter set out by the Standards Committee.

28. Suspension or partial suspension will normally start immediately after the Committee has made its decision, although if the Committee chooses, it could 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).

29. Periods of suspension or partial suspension set by the Standards Committee will not count towards the six month limit for absences from meetings of the authority, after which a Member would normally be removed from office under Section 65 of the Local Government Act 1972.

## Deciding a Penalty

30. The Standards Committee will ensure that the penalty is reasonable and in proportion to the Member's behaviour. Before deciding what penalty to set, the Committee will consider the following questions, along with any other relevant circumstances:

- What was the Member's intention? Did the Member know that they were 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 (eg 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 that they were 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?
- Notice of Findings

31. The Standards Committee will announce its decision at the end of the hearing.



32. Within two weeks after the hearing, the Standards Committee will give its full written decision to the following people:
- (i) the Member who is the subject of the finding
  - (ii) the ESO concerned
  - (iii) the Standards Committees of any other authorities concerned
  - (iv) the person(s) who made the allegation
33. The full written decision will include:
- A summary of the allegation
  - The relevant section(s) 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 has failed to follow the Code of Conduct, including the reasons for that finding
  - The penalties applied (if any), including the reasons for any penalties
  - The right to appeal

### **Making the findings public**

34. The Standards Committee will arrange for a summary of the decision and the reasons for that decision to be published in one or more newspapers circulating in the area.
35. If the Standards Committee finds that a Member did not fail to follow the Code of Conduct, the public summary will state this, and give the reasons for this finding. In these cases, the Member involved will be entitled to ask that no summary of the decision should be passed to local newspapers.
36. If the Standards Committee finds that a Member failed to follow the Code but that no action is needed, the public summary will say that the Member failed to follow the Code, outline what happened and give reasons for the Committee's decision not to take any action.
37. If the Standards Committee finds that a Member failed to follow the Code and it has set a penalty, the public summary will say that the Member failed to follow the Code, outline what happened, explain what penalty has been set and give reasons for the Committee's decision.
38. The Standards Committee's reports and minutes will 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 be available for public inspection.

### **Public access to hearings and documents**

39. Hearings will be held in public where possible to ensure that the hearing process is open and fair.
40. However, a hearing will be held in private where this is necessary to prevent confidential information being revealed (such as information which 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).
41. The Standards Committee has the discretion also to meet in private where it is necessary to prevent 'exempt information' (as set out in Schedule 12A to the Local Government Act 1972) being revealed to the public. The Regulations have also provided four other categories of exempt information, as follows:
- (i) information relating to the personal circumstances of any person
  - (ii) information which must be kept confidential (eg under a contract)
  - (iii) information relating to national security
  - (iv) the deliberations of the Standards Committee when hearing matters referred by an ESO.

42. Generally, copies of the agenda, reports and minutes of a hearing will be available for public inspection before and during a hearing and also for a period of up to six years after the hearing has taken place. This will include the ESO's report. However, the Chief Executive and Town Clerk/Monitoring Officer will have the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his opinion, is likely to be held in private. Similarly, such sections of the report or minutes relating to private session would not be made available for public inspection after the hearing.

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

43. 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. The President must receive this written application within 21 days of the Member receiving notice of the Standards Committee's decision, and the Member must outline the reasons for the proposed appeal and whether or not they want the appeal carried out in writing or in person.
44. The President will, within 21 days of receipt of the application, give their written decision to:
- the Member concerned
  - the ESO concerned
  - the Standards Committee who made the original finding
  - the Standards Committee of any other authorities concerned
  - the person(s) who made the allegation
45. If permission to appeal is refused, the President will explain the reasons for that decision.
46. If permission is granted, the President 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).
47. If the Member does not agree to have the appeal carried out in writing, the appeal tribunal will hold a hearing, giving the member at least 21 days' notice of the date of the hearing.
48. The Member can be represented at the hearing by counsel, a solicitor or any other person they choose. If the Member wishes to have non-legal representation, they must obtain permission from the tribunal beforehand. The tribunal may prevent that person acting as a representative if he or she is directly involved in the case.
49. 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 appropriate cases, to attend or be represented at the appeal hearing.
50. 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. However, the tribunal may choose to carry out the appeal entirely through written representations.
51. If the Member fails to attend or be represented at the hearing, the tribunal may determine the matter in the Member's absence, unless it is satisfied that there is good reason for the Member's absence, in which case it would postpone the hearing to another date.
52. The tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the Standards Committee.
53. If the tribunal upholds the Standards Committee's finding (or part of it), it may:
- (a) approve the penalty set by the Standards Committee
  - (b) require the Standards Committee to set a penalty if it has not already done so
  - (c) require the Standards Committee to set a different penalty to that already set.
54. If the tribunal dismisses the finding of the Standards Committee, the decision and resulting penalty will no longer apply. The Standards Committee must act on any directions given by the appeal tribunal.

55. Notice of the appeal tribunal's decision will be given to:

- the Member who is the subject of the decision
- the ESO concerned
- the Standards Committee which made the original finding
- the Standards Committees of any other authorities concerned
- the person(s) who made the allegation

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

**Standards Committee determinations**  
Guidance for monitoring officers and Standards Committees

**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**

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.

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

Please note that no such finding has been made yet.

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

Please attach separate sheets if necessary.

**Standards Committee determinations**

Guidance for monitoring officers and Standards Committees

**FORM D**

**Arrangements for the Standards Committee hearing**

Please tick the relevant boxes.

<p><b>1</b> The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing?  If 'No', please explain why.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Reason:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p><b>2</b> Are you going to present your own case?</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	
<p><b>3</b> If you are not presenting your own case, will a representative present it for you?  If 'Yes', please state the name of your representative.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Name:</b></p> <p>_____</p> <p>_____</p> <p>_____</p>
<p><b>4</b> Is your representative a practising solicitor or barrister?  If 'Yes', please give his or her legal qualifications. Then go to question 6.  If 'No', please go to question 5.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Qualifications:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p><b>5</b> Does your representative have any connection with the case?  If 'Yes', please give details.</p>	<p><b>YES</b> <input type="checkbox"/></p> <p><b>NO</b> <input type="checkbox"/></p>	<p><b>Details:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

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

Please attach separate sheets if necessary.



**FORM E**

**Details of proposed witnesses to be called**

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

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

Please attach separate sheets if necessary.

**Hearing Procedure Rules for Local Determinations by the Standards Committee**

**Interpretation**

1. 'Member' means the member of Southend-on-Sea Borough Council or Leigh-on-Sea Town Council 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 Southend-on-Sea Borough Council, and includes his or her nominated representative. In the case of matters which 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 sub-committee of the Standards Committee.
4. 'Legal Adviser' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of Southend-on-Sea Borough Council, or someone appointed for this purpose from outside the Council.

**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 Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the Member and the Investigator, if they are present.

**Introductions**

7. The Chairman will introduce the members of the Committee and everyone involved and will explain how the Committee is going to conduct the hearing.

**Preliminary Procedural Issues**

8. The Committee will 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. The Committee will 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 will move on to the next stage of the hearing.
11. If there is a disagreement, the Investigator (if present) will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the 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 will then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

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, the Investigator will 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, they 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 their absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee will then either:
  - (a) continue with the hearing, relying on 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 they are not already.
16. The parties will then withdraw to allow the Committee to consider the representations and evidence in private.
17. Upon their return, the Chairman will announce the Committee's findings of fact.

**Did the Member fail to follow the Code of Conduct?**

18. The Committee will then consider whether or not, based on the facts it has found, the Member failed to follow the Code of Conduct.
19. The Member will be invited to give relevant reasons why the Committee should not decide that they failed to follow the Code.
20. The Committee will then consider any verbal or written representations from the Investigator.
21. The Committee may, at any time, question anyone involved on any point raised in their representations.
22. The Member will be invited to make any final relevant points.
23. The parties will withdraw to allow the Committee to consider the representations.
24. Upon their return, the Chairman will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

**If the 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, the Committee will move on to consider whether it should make any recommendations to the Council.

**If the Member has failed to follow the Code of Conduct**

26. If the Committee decides that the Member has failed to follow the Code, 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
  - (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 parties will withdraw to allow the Committee to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.

29. Upon their return, the Chairman will announce the Committee's decision.

### **Recommendations to the Council**

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 Council, with a view to promoting high standards of conduct amongst 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 issue a full written decision shortly after the end of the hearing.