



# Epping Forest District Council

## **STANDARDS COMMITTEE** **Wednesday, 2nd July, 2008**

**Place:** Civic Offices, High Street, Epping  
**Room:** Committee Room 1  
**Time:** 7.30 pm  
**Committee Secretary:** G Lunnun - The Office of the Chief Executive  
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

### **Members:**

Ms M Marshall (Chairman), G Weltch , M Wright , Councillors B Rolfe and Mrs P Smith

### **Parish/Town Council Deputy Representative(s):**

Councillors Mrs D Borton, B Surtees (Deputy)

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## **1. CHAIRMAN OF THE COMMITTEE**

### **Recommendation:**

**To elect a Chairman of the Committee for the municipal year 2008/09**

(Monitoring Officer) The Committee is asked to elect a Chairman for the coming year. The Chairman must be elected from the independent co-optees and cannot be a member of the District Council or of any Parish or Town Council.

## **2. APPOINTMENT OF VICE-CHAIRMAN**

### **Recommendation:**

**To appoint, subject to Council approval, a Vice-Chairman of the Committee for the municipal year 2008/09**

(Monitoring Officer) The Committee is asked to appoint a Vice-Chairman of the Committee for the coming year. The appointment must be from the independent co-optees on the Committee. A vice-chairman has not been appointed in the past but it is considered prudent to make an appointment to cover for the chairman when necessary. As this requires a change to the Council's Constitution an appointment will be subject to Council approval and will need to be reflected in the revised Article 9 of the Constitution to be considered later in the meeting.

**3. APOLOGIES FOR ABSENCE**

**4. MINUTES (Pages 5 - 6)**

To approve as a correct record the minutes of the meeting held on 24 April 2008 (attached).

**5. DECLARATIONS OF INTEREST**

To declare interests in any item on the agenda.

**6. LOCAL ASSESSMENT OF ALLEGATIONS OF MISCONDUCT BY COUNCILLORS (Pages 7 - 26)**

(Monitoring Officer) To consider the attached report.

**7. CONSTITUTION - ARTICLE 9 - THE STANDARDS COMMITTEE - REVISIONS (Pages 27 - 30)**

To consider the attached revised article 9 of the Council's Constitution and recommend its adoption to the Council.

**8. ADMINISTRATION OF THE LOCAL ASSESSMENT SCHEME (Pages 31 - 36)**

**Recommendation:**

**(1) To note the steps being taken by the Local Assessment Officer to introduce the new procedures for dealing with complaints against Councillors; and**

**(2) To consider any further steps that the Committee wish to take in publicising the scheme.**

1. (Local Assessment Officer) The Standards Board has issued Guidance on the Administration of the Local Assessment Scheme to reflect the Regulations recently issued. The administration of the scheme has meant that arrangements have already been made to publicise the new complaints system:

- (a) on the Council's website;
- (b) by placing a public notice in the local newspaper;
- (c) putting an article into the Council's own magazine, the Forrester; and
- (d) Issueing a press release.

2. The Standards Committee and the Local Democracy webpages now include a link to a new page on Councillor Conduct which gives information about our scheme, a suggested complaint form (attached); links to the Code of Conduct and the (currently draft) Assessment Criteria (attached to an earlier report).

3. The Standards Board has also set up a reporting system for local complaints.

Local Authority Standards Committees are required to submit a return at the end of each quarter on the number and types of complaints. The system also enables the tracking of complaints and the results of the Assessments, Reviews, and Hearings to be monitored. The expectation of the Standards Board is that Assessments will be carried out within a period of 20 working days of receipt and that any Hearings will be completed within a three month period.

## 9. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2008/09 provides for meetings of the Committee on 15 July 2008, 13 October 2008, 27 January 2009 and 14 April 2009.

Additional meetings can be arranged as and when required by the Committee.

## 10. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

<b>Agenda Item No</b>	<b>Subject</b>	<b>Exempt Information Paragraph Number</b>
Nil	Nil	Nil

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

<b>Agenda Item No</b>	<b>Subject</b>
Nil	Nil

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

**Background Papers:** Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and

- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Standards Committee **Date:** 24 April 2008

**Place:** Committee Room 1, Civic Offices, High Street, Epping **Time:** 7.30 - 8.25 pm

**Members Present:** Ms M Marshall (Independent Member) (Chairman), G Weltch (Independent Member) and Councillor Mrs P Smith (Epping Forest Council Appointee)

**Other Councillors:**

**Apologies:** Councillor B Surtees, Councillor Mrs D Borton and Councillor Mrs J H Whitehouse

**Officers Present:** C O'Boyle (Monitoring Officer), I Willett (Deputy Monitoring Officer), S G Hill (Senior Democratic Services Officer) and G Lunnun (Allegations Determination Manager)

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### 31. MINUTES

**RESOLVED:**

That the minutes of the meeting of the Committee held on 26 February 2008 be taken as read and signed by the Chairman as a correct record.

### 32. MATTERS ARISING FROM THE MINUTES OF THE LAST MEETING

(a) Planning Protocol (Minute 23)(a)

The Deputy Monitoring Officer reported that it had not been possible to agree a convenient date for the proposed training session. However, emails had been sent to relevant staff, a letter had been sent to local councils and an item had been included in the Council Bulletin. In addition an advice note had been included on Area Plans Sub-Committee agenda. The Committee noted that the issue would also be addressed in future training sessions regarding the Protocol.

### 33. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

### 34. SIXTH ANNUAL REPORT 2007/08

The Committee considered a draft of their sixth Annual Report for 2007/08. Several alterations were agreed and the Chairman advised that she would be sending an email to the Deputy Monitoring Officer with proposed further amendments.

**RESOLVED:**

- (1) That the officers be authorised to amend the report in accordance with Members' views and arrange for its submission to the Annual meeting of the Council on 15 May 2008; and
- (2) That, if possible, the Chairman of the Committee attend the Annual meeting to present the report.

**35. WALTHAM ABBEY TOWN COUNCIL - APPLICATIONS FOR DISPENSATION**

The Committee received a report on applications for dispensation from all members of Waltham Abbey Town Council.

In accordance with Section 100(4)(b) of the Local Government Act 1972, together with paragraphs 6 and 25 of the Council's Procedure Rules, the Chairman had permitted on the grounds of urgency, the inclusion of this item of business so that the vacancy on the Town Council could be filled without delay.

The Committee was advised that in the absence of a Parish Council representative it would not be possible to consider this report.

**RESOLVED:**

That a Sub-Committee comprising Ms M Marshall, G Welch and Councillor Mrs D Borton or Councillor B Surtees be authorised to consider and to determine the applications for dispensation.

**36. TRAINING FOR LOCAL ASSESSMENT**

The Deputy Monitoring Officer advised that Braintree District Council had now confirmed the arrangements for a training session for local assessment being held on 12 May 2008.

Members were asked to advise if they proposed to attend the training session.

In accordance with Section 100(4)(b) of the Local Government Act 1972, together with paragraphs 6 and 25 of the Council's Procedure Rules, the Chairman had permitted on grounds of urgency, the inclusion of this item of business so that Braintree District Council could be advised of the members and officers attending.

**RESOLVED:**

That Braintree District Council be advised that this Council will be represented at the training session by Ms M Marshall, M Wright, Councillor Mrs P Smith, Councillor B Surtees, the Monitoring Officer, the Deputy Monitoring Officer and the Allegations Determination Manager.

**37. DATES OF FUTURE MEETINGS**

The Committee noted that the calendar for 2008/09 provided for meetings of the Committee on 15 July 2008, 13 October 2008, 27 January 2009 and 14 April 2009.

**CHAIRMAN**

## **Report to the Standards Committee**

**Date of meeting: 2 July 2008**

**Subject: Local Initial Assessment of Allegations of Misconduct by Councillors**

**Responsible Officer: C O'Boyle (Monitoring Officer)  
I Willett (Deputy Monitoring Officer)**

**Democratic Services Officer: G Lunnun (01992 - 564244)**



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### **Recommendations:**

#### **Assessments Sub-Committee**

- (1) That an Assessments Sub-Committee comprising three members of the Standards Committee be established to carry out initial assessments of complaints;**
- (2) That the terms of reference for the new Sub-Committee be approved as set out in Appendix 1 to this report;**

#### **Reviews Sub-Committee**

- (3) That a Reviews Sub-Committee be established comprising three members of the Standards Committee to carry out reviews of decisions by the Assessments Sub-Committee;**
- (4) That the terms of reference of the new Sub-Committee be approved as set out in Appendix 2 to this report;**

#### **Standards Committee**

- (5) That a report be submitted to the Council recommending:
  - (a) that the number of District Councillor members of the Standards Committee be increased to three and an appointment to the additional place be made at the Council meeting;**
  - (b) that the number of Parish/Town Council representatives be increased to three, with the present deputy becoming one of the members;****

#### **Hearings Sub-Committees**

- (6) That Hearings Sub-Committees be convened as and when required;**
- (7) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee make appointments to the Assessments, Reviews and**

Hearings Sub-Committees when required and in accordance with statutory requirements;

#### **Joint Working**

- (8) That further consideration be given to a policy for joint working with other local authorities when further Government regulations are published;

#### **Notifications to Councillors and Complainants**

- (9) That the Monitoring Officer be authorised:
- (a) to notify the relevant Councillor of the receipt of a complaint, the name of the complainant and a summary of the complaint no later than the despatch of case details to the Assessments Sub-Committee, notification to include, where necessary any decision regarding confidentiality;
  - (b) to acknowledge receipt of allegations to complainants at the same time as notification under (a);
  - (c) to consult the Chairman of the Standards Committee on any cases where delayed notification is appropriate;

#### **Local Resolution of Complaints**

- (10) That the local protocol set out in Appendix 3 to this report be adopted to enable the Monitoring Officer to seek local resolution of complaints where possible in advance of an Assessments Sub-Committee meeting;

#### **Assessment Criteria**

- (11) That the criteria for initial assessments of complaints as set out in Appendix 4 be approved;

#### **Anonymous Complaints**

- (12) That, as a matter of policy, complaints made anonymously be not considered;
- (13) That the Monitoring Officer be authorised keep the identity of a complainant confidential where she feels that this would be in the public interest;

#### **Pre Investigation by the Monitoring Officer**

- (14) That the Monitoring Officer be authorised to obtain and supply to the Assessments Sub-Committee any publicly-available information which is considered helpful in the consideration of any complaint;

#### **Meeting Arrangements - Assessments, Reviews and Hearings Sub-Committees**

- (15) That the Assessments and Reviews Sub-Committee meetings be held in private session unless there are exceptional circumstances which warrant the proceedings being held in public;



- (16) That, as a matter of policy, all meetings of the Hearings Sub-Committee be held in public session unless there are clear statutory grounds for its proceedings to take place in private session;

#### **Results of Investigations**

- (17) That the functions of determining whether to accept a finding by the Monitoring Officer of no breach of the Code of Conduct or to proceed to a local hearing in cases where the finding is that a breach of the Code has been found be delegated to the Assessment Sub-Committee; and

#### **Interim Arrangements**

- (18) That, pending the adoption of the revised constitution for the Standards Committee and the appointment of an additional District Councillor, the Monitoring Officer, in consultation with the Chairman of the Standards Committee, be authorised to convene meetings of any Sub-Committee in compliance with statutory requirements when any complaint is received.
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#### **Local Initial Assessment of Standards Complaints**

1. Previously a complaint of misconduct by a member had to be submitted to the Standards Board for England (SBE), and the Referrals Unit of the SBE determined whether the allegation appeared to disclose a failure by a member to comply with the Authority's Code of Conduct and whether the allegation merited investigation. All such complaints must now be made to the Standards Committee of the Authority, and a Sub-Committee of the Standards Committee will have to decide whether the complaint should be investigated.
2. This report sets out the changes to the system of handling complaints against members which are now required, and the issues which need to be addressed in order to meet the new requirements.

#### **Date of Implementation**

3. The new rules will only apply to complaints received from 8 May 2008 onwards, and as each allegation must be assessed within 20 working days of receipt, it is necessary for the Committee to establish Sub-Committees required for this purpose.

#### **Number of Sub-Committees**

4. The Act requires the Standards Committee to establish a Sub-Committee (the SBE has advised that this should be known as the "Assessments Sub-Committee") which will undertake the initial assessment and decide whether the complaint shows an apparent failure to comply with the Code of Conduct and, if so, whether that complaint merits investigation or other action. If the Assessments Sub-Committee decides to take no action in respect of an allegation, the complainant will have 30 days within which to request the Authority to review that decision. The Act requires the Standards Committee to set up a second Sub-Committee (the "Reviews Sub-Committee") to conduct that review. No member can sit on the Reviews Sub-Committee in respect of a complaint if they served on the Assessments Sub-Committee for the same complaint.

5. If the matter is referred for investigation a hearing would then be held. The Standards Board recommends that such hearings should be held before a Sub-Committee (a "Hearings Sub-Committee") of between three and five members.
6. Whilst the Act prohibits any member from sitting on both the Assessments and Reviews Sub-Committees on the same case (because a member cannot fairly review his/her own decision), there is no similar statutory prohibition in respect of the Hearings Sub-Committee. The SBE advises that if a member has been involved in the case either at the Assessments Sub-Committee or the Reviews Sub-Committee, there is no reason why they should be precluded from serving on the Hearings Sub-Committee.
7. Each such Sub-Committee is recommended to comprise three members drawn from the Standards Committee. The statutory requirements for membership are as follows:
  - (a) at least 25% of each Sub-Committee must be independent members, one of whom must be present to chair the meeting;
  - (b) at least one elected member of this Council must be present at each meeting;
  - (c) at least one member must be a Parish or Town Council representative if the Sub-Committee is dealing with a complaint in respect of the conduct of a Councillor in the capacity of a local council member.

#### **Assessments Sub-Committee**

8. It is clear that meetings of this Sub-Committee will need to be called urgently to comply with the 20 day time limit. It is recommended that the Monitoring Officer in consultation with the Chairman of the Standards Committee agree the membership of the Sub-Committee on an ad hoc basis. This is considered preferable to fixed memberships which could make it more difficult to convene a meeting quickly in the event of absence of a member for any reason.

#### **Reviews Sub-Committee**

9. Any review of a decision by the Assessments Sub-Committee must be conducted within three months of a request being made. A Hearings Sub-Committee must be held within three months of receipt of the investigation report, so there is more flexibility to arrange such meetings on a date to suit the available members. In addition, if the matter is referred for investigation without a review, more members will also be available for the Hearings Sub-Committee. It is proposed that arrangements for appointing Reviews and Hearings Sub-Committee meetings should be conducted in the same way as for the Assessments Sub-Committee.

#### **Joint Working Between Authorities**

10. The Act provides that authorities may appoint Joint Committees to discharge all or any of their functions in relation to complaints without maintaining its own separate Sub-Committees. Such joint working may be more acceptable in terms of the initial assessment and the review, rather than the actual hearings which might benefit from a more "local" approach. The regulations bringing these provisions into force have not yet been made, and the Committee is asked to review these arrangements when further detail is known.

## **Notifications to the Member/Complainant**

11. The Act requires the Standards Committee to notify the Councillor of the receipt of a complaint and to provide a written summary of the allegation. In practice, the first meeting at which the Committee itself could do so is likely to be the initial assessment. However, the Authority ought to acknowledge receipt of the allegation to the person making the allegation and advise when the complaint will be assessed.
12. On the question of notifying the Councillor concerned, it is not considered appropriate to withhold this until after the Assessments Sub-Committee has reached its decision. For instance, the member could learn of the complaint from the person making the complaint or from the press which would clearly be of concern. Accordingly, it is recommended that the Monitoring Officer notify the member at the same time as acknowledging the receipt of the complaint to the person making the complaint and no later than sending the agenda out to members of the Assessments Sub-Committee, i.e. at least five clear working days before the meeting of the Sub-Committee. Any member who sought to lobby other members in his/her own cause would be committing a further breach of the Code of Conduct.
13. Concerns have been voiced about the danger of a member interfering with evidence or intimidating witnesses. It has been suggested that in such cases the member might not be notified of the complaint until the investigation had secured such evidence. Although it is considered that this may be unlikely to happen, it is proposed that the Monitoring Officer be given the discretion, after consulting the Chairman of the Standards Committee, to defer notification in exceptional circumstances. In such cases, the Monitoring Officer would notify the member concerned as soon as the reasons for deferral of notification no longer applied, for example, when the investigation had already been completed.

## **Local Resolution of Complaints**

14. There is no formal process for local resolution of complaints in the 2007 Act, although regulations may enable the Assessments Sub-Committee to propose conciliation or some other course as an alternative to a formal investigation. However, where the member concerned has acknowledged that his/her conduct was at fault and has apologised, and the complainant has accepted that the complaint should not proceed to formal investigation, the Assessments Sub-Committee may determine that no further action is required.
- ... 15. To cover this situation, the Committee is recommended to adopt a local protocol as set out in Appendix 3 authorising the Monitoring Officer to seek such local resolutions in appropriate cases.

## **Filtering out of Irrelevant Complaints**

16. Standards Board experience has been that a large number of complaints received do not relate to the Code of Conduct for Members, and publicity for the new system may result in more such complaints. Such requests can be categorised as follows:
  - (a) requests for an additional service from the Authority;
  - (b) statements of policy disagreement;
  - (c) matters relating to other authorities; and

(d) matters relating to a member's private life.

17. The 2007 Act provides that the function of initial assessment of complaints must be conducted by the Standards Committee, or by a Sub-Committee, but does not allow for delegation of this function to the Monitoring Officer. Where the Monitoring Officer identifies that a complaint clearly falls within categories (a) and (b) of paragraph 16, it is recommended that she be authorised to respond to the complainant on how the matter can be dealt with, only reporting to the Assessments Sub-Committee if the complainant insists that it be dealt with as a standards complaint. In all other cases, it will be necessary to report to the Assessments Sub-Committee and for the Assessments Sub-Committee and for the latter to determine which of the following statutory options should apply:

(a) refer the allegation to the Monitoring Officer;

(b) refer the allegation to the Standard Board for England;

(c) decide that no action should be taken in respect of the allegation; or

(d) where the allegation relates to a person who is no longer a member of this Authority but is a member of another relevant local authority, refer the allegation to the appropriate Monitoring Officer.

... 18. Assessment criteria for these categories are attached in Appendix 4.

### **Anonymous Complaints**

19. There is nothing in the legislation which requires a complaint to be signed by the complainant. The Standards Board for England has entertained some anonymous complaints and this has given rise to concern. In such cases, it is not possible to meet the requirements to notify the complainant of the decision in respect of the complaint.

20. It is recommended that the Committee take a policy decision that anonymous complaints should not be entertained.

### **Multiple Complaints**

21. It is not uncommon that a single event will give rise to similar complaints from a number of different complainants. The legislative position is that each separate complaint must be considered, and that even where a meeting of the Assessments Sub-Committee has previously decided that no action be taken upon an identical complaint, a subsequent complaint must still be referred back to the Sub-Committee.

### **Pre-Investigation**

22. The Assessments Sub-Committee has to decide whether the allegation appears to disclose a failure to comply with the Code of Conduct and whether it merits investigation. Where the Sub-Committee has only a letter of complaint, it is not always easy to assess whether there is any substance to the allegation. However, there may be information which might substantiate, or contradict, the allegation and so make it easier for the Sub-Committee to decide whether the complaint has any substance. The Monitoring Officer should be authorised to check publicly available information between receipt of the complaint and the meeting of the Assessments Sub-Committee, to assist with this process. This is covered in

... Appendix 3.

### **Public or Private Meetings**

23. The new Regulations provide that information presented to the Assessments, Reviews and the Hearings Sub-Committees can be regarded as “exempt information” for the purpose of Schedule 12A to the Local Government Act 1972. They will therefore have a discretion to exclude the press and public from their meetings. Each meeting will therefore start by resolving whether to exclude press and public. It is recommended that Assessments and Reviews Sub-Committees should hold meetings in private.
24. Hearings Sub-Committees can be held in private but the practice adopted to date has been to hold these in public for the purposes of public accountability and transparency. The Committee is invited to make a policy decision in that regard, subject to a proviso that exceptional circumstances may warrant exclusion of public and press.

### **Public Information about Complaints Received - Agenda, Minutes and Reports**

25. The Authority must publish an agenda stating the date, time and location of the meeting and in general terms the business to be transacted, but it can withhold copies of the reports and background papers where they would disclose exempt information and the meeting is likely to be held in private. Once a meeting has decided that particular complaints should be investigated or not a minute of that meeting would be published. By this stage, the member will normally have been notified of the complaint, and the complainant will also be notified of the decision in respect of his/her complaint.

### **Member Requests for Information Under the Data Protection Act**

26. Any person is entitled to request access to any personal information about them held by the Authority. Accordingly a member may request to be informed whether the Authority has received a complaint about him/her and may ask to see and correct that information. Section 31 of the Data Protection Act 2000 provides that the Authority would not have to disclose such information where it is held for any relevant function which is designed for protecting members of the public against dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity. Accordingly, the Authority would be able to refuse to disclose whether a complaint had been received until the member was notified on the sending out of the Assessments Sub-Committee agenda, or where no notification is made because the disclosure of that information would be likely to prejudice the proper conduct of the investigation.

### **Freedom of Information Act (FOI)**

27. As FOI requests must be dealt with within 20 working days, the Authority may need to respond to press and public requests before the Assessments Sub-Committee has met. The Authority must determine each request individually. However, the Authority may refuse to provide information where the information is held for “law enforcement” purposes, which includes the regulation of improper conduct, and where the disclosure would prejudice the effective conduct of public affairs. However, in each case, disclosure can only be resisted where the public interest in withholding the information outweighs the public interest in its disclosure. Accordingly, the Authority may have grounds for resisting early disclosure of

information relating to complaints received, but this is likely to be contested by persons making such requests.

... Appendix 3 to this report sets out the responsibilities and discretions of the Monitoring Officer in the provision or withholding of information relating to complaints.

### **Notification following Initial Assessment**

28. Where the Assessments Sub-Committee decides that no action be taken on a complaint, it must take reasonable steps to give notice in writing to the complainant of the decision and the reasons for that decision. It must also give similar notification to the member concerned of a decision not to take any action. There is no such requirement for a decision to investigate or to refer a complaint to the Standards Board for England, but such notification is desirable unless there were exceptional circumstances where such disclosure might impede proper investigation. In taking a decision on whether a complaint should be investigated, the Assessments and Reviews Sub-Committees will be required to state their reasons for each decision. It will also be the relevant Sub-Committee which notifies the complainant and the member, not the Monitoring Officer.

### **Review of Initial Assessment**

29. Where the Assessments Sub-Committee decides that no action should be taken on a complaint, the complainant may, within 30 days of being notified of that decision, request the Reviews Sub-Committee to review that decision. Standards Board guidance suggests that the Reviews Sub-Committee should apply the same criteria used for initial assessment. In cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint, the Reviews Sub-Committee should consider carefully if it is more appropriate to pass this to the Assessments Sub-Committee to be handled as a new complaint. In such a case, the Reviews Sub-Committee will still need to make a referral decision that the review request will not be granted. The Reviews Sub-Committee's decision is then notified to the complainant, who then has no further recourse other than judicial review.

### **Decision whether to Conduct a Local Hearing**

30. Where the Monitoring Officer's investigation concludes that there has not been a failure to observe the Code of Conduct, the current regulations provide for the Monitoring Officer's report to be submitted to the Standards Committee (or a Sub-Committee of the Standards Committee) which then decides whether it accepts that conclusion, or whether it wishes to conduct a formal hearing.
31. Where the Monitoring Officer's investigation concludes that there has been a failure to observe the Code of Conduct, the old regulations provided for the matter to proceed directly to a local hearing. If the Hearings Sub-Committee decided that it could not fairly hear the matter or that the matter was so serious that it would merit more than the maximum 3 months suspension, the Hearings Sub-Committee could request the Standards Board to take the matter back and direct it to a national Case Tribunal.

32. The new Regulations add another step. The Monitoring Officer's report now has to be reported to the Standards Committee, or a Sub-Committee, which can only decide to send it for a local hearing or to send it to a Case Tribunal. Given that the maximum local sanction is now increased to six months' suspension, and the Monitoring Officer has the opportunity to refer the matter to the Standards Board at any stage prior to the completion of the investigation, the number of matters which will require to be referred to a Case Tribunal by the Sub-Committee could be very limited.
33. However, the new Regulations require that a meeting is held to consider the report and take this decision before the actual hearing can be arranged. It is proposed that this decision should be taken by the Assessments Sub-Committee. To avoid setting up another Sub-Committee, it is recommended that the functions of (a) determining whether to accept the Monitoring Officer's finding of no breach, or (b) to proceed to a local hearing or (c) to refer the matter to a Case Tribunal in cases where the Monitoring Officer's finding is that there has been a breach, should be delegated to the Assessments Sub-Committee (See Appendix 1). The matter will then proceed to a meeting of a Hearings Sub-Committee.

#### **Publicity for the New Arrangements**

34. The Standards Board has provided guidance on such notice being advertised in one or more local newspapers, the Authority's own newspaper and on the Authority's website and by means of a public notice. The Monitoring Officer has already arranged appropriate publicity in accordance with the Regulations and Guidance.

#### **Cost Implications**

35. Overall, this change will mean a larger Standards Committee, with more Sub-Committees, and more meetings. It will require the Monitoring Officer and her staff to undertake a significant amount of additional work in receiving any allegations of misconduct and reporting them to the relevant Sub-Committees. There is a significant cost to conducting any investigations and hearings. Under the legislation, even where complaints relate to the conduct of Parish or Town Councillors, it is the District Council which bears the full cost of investigations and hearings. There are therefore potentially very substantial cost implications, but the actual costs will depend upon how many complaints of misconduct are received. There is no additional Central Government funding being provided as a result of this change.

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## Terms of Reference of the Assessments Sub-Committee

### 1. Terms of Reference

- (a) The Assessments Sub-Committee is established to receive allegations that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:
  - (i) refer the allegation to the Monitoring Officer, with an instruction that she arrange a formal investigation of the allegation, or directing that she arrange training, conciliation or such appropriate alternative steps as permitted by Regulations;
  - (ii) refer the allegation to the Standards Board for England;
  - (iii) decide that no action should be taken in respect of the allegation; or
  - (iv) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.
- (c) Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:
  - (i) it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;
  - (ii) the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
  - (iii) the matter should be referred to the Adjudication Panel for determination.
- (d) Where the Sub-Committee resolves to carry out any of the actions set out in paragraph 1(b) or 2(c) above, the Sub-Committee shall state its reasons for that decision.

### 2. Composition of the Assessments Sub-Committee

- 2.1 The Assessments Sub-Committee shall comprise 3 members, of whom 1 shall be an independent co-opted member of the Standards Committee, and who shall chair the Sub-Committee, and 2 elected members of the District Council. Except when the Assessments Sub-Committee considers a matter relating to the conduct of a person as a Parish or Town Councillor, the Sub-

Committee shall include a Parish or Town Council representative who is a member of the Standards Committee in place of one of the elected members of the District Council.

- 2.2 The appointment of members to the Sub-Committee shall be carried out by the Monitoring Officer in consultation with the Chairman of the Standards Committee.
- 2.3 No meetings of the Sub-Committee shall be held unless all three members are in attendance.

### **3. Frequency of Meetings**

The Sub-Committee shall meet on an ad hoc basis as and when necessary.

## Terms of Reference of the Reviews Sub-Committee

### 1. Terms of Reference

- 1.1 The Reviews Sub-Committee is established to review, at the request of a person who has made an allegation that a member of the Authority has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Assessments Sub-Committee that no action be taken in respect of that allegation.
- 1.2 Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Assessments Sub-Committee and shall then do one of the following:
- (a) refer the allegation to the Monitoring Officer, with an instruction that she arrange a formal investigation of the allegation, or specifying that she take an alternative action as permitted by Regulations;
  - (b) refer the allegation to the Standards Board for England;
  - (c) decide that no action should be taken in respect of the allegation; or
  - (d) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;
- and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.
- 1.3 Where the Sub-Committee resolves to carry out any of the actions set out in Paragraph 1(b) above, the Sub-Committee shall state its reasons for that decision.

### 2. Composition of the Reviews Sub-Committee

The Reviews Sub-Committee shall comprise 3 members, of whom 1 shall be an independent co-opted member of the Standards Committee, who shall chair the Sub-Committee and the other 2 shall be elected members of the District Council. Except when the Referrals Sub-Committee considers a matter relating to the conduct of a person as a Parish or Town Councillor, the Sub-Committee shall include a Parish or Town Council representative who is a member of the Standards Committee in place of one of the elected members of the District Council.

### 3. Frequency of Meetings

The Reviews Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Assessments Sub-Committee within 3 months of the receipt of the request for such a review from the person who made the allegation.

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## Monitoring Officer Protocol

### Guidance to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegation that a member of the Authority has failed to comply with the Code of Conduct

#### 1. Receipt of Allegations

- 1.1 The Monitoring Officer shall set up arrangements within the Authority to secure that any allegation made in writing that a member of the Authority has or may have failed to comply with the Authority's Code of Conduct is referred to her immediately upon receipt by the Authority.
- 1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the Authority can comply with its obligations under the relevant legislation.
- 1.3 Complaints shall only be considered where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in her opinion that would be in the public interest.

#### 2. Notification of Receipt of Allegations

- 2.1 All relevant allegations must be assessed by the Assessments Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Assessments Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- 2.2 Following receipt of the allegation, and where the allegation appears to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly, and in any case in advance of the relevant meeting:
  - (a) acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessments Sub-Committee at its next convenient meeting;
  - (b) notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Assessments Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, she shall consult the Chairman of the Assessments Sub-Committee, or in her absence the Chairman of the

Standards Committee, and may then decide that no such advance notification shall be given;

- (c) collect such information as is readily available and would assist the Assessments Sub-Committee in its function of assessing the allegation;
- (d) seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- (e) place a report, including a copy of the allegation, such readily available information and her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Assessments Sub-Committee.

### **3. Local Resolution**

- 3.1 Local resolution is not an alternative to reporting the allegation to the Assessments Sub-Committee, but should be regarded as a means of avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, she shall approach the member against whom the allegation has been made and ask whether she is prepared to acknowledge that her conduct was inappropriate, and whether she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action.
- 3.3 The Monitoring Officer should then report to the Assessments Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, where the member has acknowledged that her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Assessments Sub-Committee might take that into account when considering whether the matter merits investigation.

### **4. Review of Decisions not to Investigate**

- 4.1 Where the Assessments Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 days of receipt of such notification request that the Reviews Sub-Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Reviews Sub-Committee the information which was provided to the Assessments Sub-Committee in respect of the matter, the summary of the Assessments Sub-Committee and any additional relevant information which has become available prior to the meeting of the Reviews Sub-Committee.

## **5. Local Investigation**

- 5.1 The Monitoring Officer will not personally conduct a formal local investigation.
- 5.2 It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Assessments Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include, the Deputy Monitoring Officer, another senior officer of the Authority, a senior officer of another authority or an appropriately experienced consultant.

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## Epping Forest District – Standards Committee

### Local Assessment of Complaints – Criteria

The Standards Committee will **not** investigate complaints that are:

- Malicious, relatively minor, politically motivated, trivial or tit for tat.
- Made anonymously.
- Contain no prima facie evidence of a breach of the Code.
- Where the complainant has not supplied enough information to justify a decision to refer the matter for investigation or to evidence their complaint or have supplied information of too general a nature from which to make a judgement to investigate.
- Where an investigation would serve no useful purpose or is not serious enough to warrant a sanction or where only an apology was appropriate.
- The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Subcommittee or the local Standards Committees and where no new relevant evidence has been submitted.
- Acts carried out in the Member's private life, when they are not carrying out the work of the authority or have not misused their position as a Member.
- About dissatisfaction with a council decision, about the way the Council conducts or records its meetings, the way the Council has or has not done something.
- Within the Council's complaints process.
- About someone who is no longer a member of either the District Council or a Town or Parish Council within the area, or is a member of another authority.
- More than 1 year has passed since the alleged conduct occurred.
- Not suitable for local investigation (see referral criteria below).
- Where alternative action such as training, mediation would be more appropriate.

The Standards Committee will refer the following cases to the Standards Board for England:

- Where the status of the member(s) being complained of would make it difficult to deal locally with the complaint. For example: Complaints concerning the Leader of the Council, Cabinet member or leading opposition members, Chairman or Standards Committee members.

- Complaints from the Chief Executive, Monitoring Officer or Service Director.
- Instances where a large number of key people are conflicted out or where the authority itself might be perceived to have an interest in the outcome of the case.
- Instances where there has been national attention, or where the Standards Committee feels that the matter turns on an important point of interpretation of the Code (a test case).
- Where there are other public issue considerations, exceptional circumstances or allegations of governance dysfunction that would make it difficult for the authority to deal with the case fairly or speedily.
- Where the Assessment Sub-committee, having undertaken their initial assessment, believes that the matter should be dealt with at Standards Board level.

## ARTICLE 9 - THE STANDARDS COMMITTEE

### 9.01 Standards Committee

The Council will establish a Standards Committee, to be known as the Epping Forest District Standards Committee.

### 9.02 Composition

#### (a) Membership

The Standards Committee will comprise:

- 3 Members of Council
- 3 Independent co-optees
- 3 Parish/Town Council representatives

#### Terms of Office

Each independent member shall serve for three years and be eligible for re-appointment. The Parish representatives shall be nominated by the Association of Local Councils (Essex Branch) for a term of one year and be eligible for nomination for further terms of one year. District Council representatives shall be appointed for terms of one year and be eligible for re-appointment.

#### (b) Independent Members

Independent members (including the Parish representative or the Parish deputy) will be entitled to vote at meetings.

#### (c) Parish Members

At least one parish member must be present when matters relating to parish councils or their members are being considered.

#### (d) Chairing the Committee

The Chairman of the Committee shall be appointed by the Committee from among those members who are not members of the District Council or of any Parish or Town Council.

***[The following paragraph is subject to approval by the Committee of the establishment of a vice-chairman to be considered earlier at this meeting]***

#### (e) Vice-Chairman of the Committee

*The Vice-Chairman of the Committee shall be appointed by the Committee from among those members who are not members of the District Council or of any Parish or Town Council.]*

### 9.03 Role and Function - General

The Standards Committee will have the following general roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members;
- (b) assisting councillors and co-opted members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train councillors and co-opted members on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to councillors and co-opted members from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the monitoring officer on any matter which is referred by an ethical standards officer to the monitoring officer; and
- (h) adjudication on complaints regarding the operation of District Council protocols annexed to the Constitution.

#### **9.04 Role and Function – Specific Responsibilities**

The Standards Committee will have the following specific responsibilities under the Local Government Act 2000 (as amended):

- (a) Section 56A – proposals for the establishment of joint Standards Committees for two or more authorities, including the Epping Forest District Council;
- (b) Section 57A – initial assessment of written allegations of breaches of the Code of Conduct;
- (c) Section 57B – reviews of any decision under Section 57A not to act on an allegation;
- (d) Section 57C – information to be given to the subject of an allegation;
- (e) Section 64 – receipt of reports by Ethical Standards Officers which are deemed to assist the Committee in the conduct of its functions;
- (f) Section 66 - matters referred to the Monitoring Officer for investigation and to the Standards Committee for adjudication
- (g) Section 66A – references to the Adjudication Panel for action in respect of misconduct.
- (h) Section 66B – provision, on behalf of the Council, of information on allegations and action taken to the Standards Board for England;

In respect of these functions, the Standards Committee shall comply with advice and regulations from the Secretary of State and advice and guidance from the Standards Board for England.

### **9.05 Role and Functions – Politically Restricted Posts**

The Standards Committee will have the following specific responsibilities under the Local Government and Housing Act 1989 (as amended):

- (a) Section 2(2) – consideration of inclusion of a post or posts in the list of politically restricted appointments;
- (b) Section 3A – grant and supervision of exemptions from political restrictions.

In exercising its powers and duties under this article, the Standards Committee shall comply with advice and regulations issued by the Secretary of State.

### **9.06 Operational Arrangements**

Details of operational arrangements for the Standards Committee are set out below:

#### **Sub Committees**

Where the Committee establishes a Sub Committee for the purpose of carrying out any of its functions, the Committee must ensure that:

- (a) at least one of the independent members is a member of that Sub Committee;
- (b) at least one member of any of the Parish Councils for which the District Council are the responsible authority is a member of that Sub Committee when matters relating to those Parish Councils are being considered.

#### **Meeting Frequency**

A minimum of four meetings per year will be held with additional meetings as and when required.

#### **Democratic Practice**

Meetings will be held in public but with provision for private sessions where necessary and subject to a public explanation for excluding the public and press.

#### **Exempt Business**

The Council's Access to Information rules shall apply to the proceedings of the Committee or of any Sub Committee established by it.

### **9.07 Scope of Duties**

The Standards Committee has the same functions in relation to Parish Councils and parish councillors as apply to the District Council and district councillors under this Article of the Constitution.

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# COMPLAINT FORM

Please fill in this form after reading the notes on completion attached.

## Your details

**1. Please provide us with your name and contact details**

<b>Your name</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

**2. Please tell us which complainant type best describes you:**

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the standards committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other (Please specify).....

**3. Who you are complaining about**

Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:

<b>Name(s):</b>	<b>Member(s) of:</b>

**4. Details of your complaint**

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form (see notes).



**5. Only complete this next section if you are requesting that your identity is kept confidential**

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Once completed it should be sent to:

Chairman of the Assessment Sub-committee  
The Standards Committee  
Office of the Chief Executive  
Epping Forest District Council  
Civic Offices  
High Street  
Epping  
Essex CM16 4BZ

## **Notes on completing this form**

Your address and contact details will not usually be released unless necessary or to deal with your complaint. However, we will tell the following people that you have made this complaint:

- The member(s) you are complaining about
- The monitoring officer of the authority
- The parish or town clerk (if applicable)

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 5 of the form.

## **Making your complaint**

You must explain what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- Which section of the Code of Conduct you believe has been breached and how.
- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The assessment sub-committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

### **What happens after you have submitted your complaint?**

- You will receive an acknowledgement of your complaint;
- The relevant member and their Council will also be informed unless confidentiality has been granted;
- The initial assessment officer may contact you to clarify details of your complaint;
- In most cases, an Assessment Subcommittee will meet within 20 working days, to determine:
  - (1) Whether to refer the matter for investigation by the Council's Monitoring Officer; or
  - (2) Whether to refer the matter for investigation by the Standards Board for England; or
  - (3) Whether to refer the matter for other action, for example Training or local conciliation; or
  - (4) That no further action should be taken. If this is the case you will be notified and have further rights to appeal this decision.

### **Additional Help**

Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

If you need any support in completing this form, please let us know as soon as possible.

In the first instance contact:

Simon Hill  
Initial Assessments Officer  
Office of the Chief Executive  
Epping Forest District Council  
Civic Offices, High Street  
Epping, Essex CM16 4BZ

Tel: 01992 564249

Email: [shill@eppingforestdc.gov.uk](mailto:shill@eppingforestdc.gov.uk)

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